

Annual Report

Director of Investigation and Research

Combines Investigation Act

for the year ended March 31, 1985
to the Hon. Michel Côté, Minister



Consumer and
Corporate Affairs
Canada

Consommation
et Corporations
Canada

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December 9, 1985

The Honourable Michel Côté, P.C., M.P.,
Minister of Consumer and Corporate Affairs,
Ottawa

DEAR SIR:

I have the honour to submit, pursuant to section 49 of the Combines Investigation Act, the following report of proceedings under the Act for the fiscal year ended March 31, 1985.

Yours very truly,

M.P. O'Farrell
Director of
Investigation and Research



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CHAPTER I

INTRODUCTION AND SUMMARY OF ACT AND PROCEDURES

This report is made pursuant to section 49 of the Combines Investigation Act (unless the contrary is indicated, references are to Chapter C-23 of the Revised Statutes, 1970, as amended), which provides as follows:

49. The Director [of Investigation and Research appointed under the provisions of the Act] shall report annually to the Minister the proceedings under this Act, and the Minister shall within thirty days after he receives it lay the report before Parliament, or, if Parliament is not then in session, within the first fifteen days after the commencement of the next ensuing session.

The purpose of the Combines Investigation Act is to assist in maintaining effective competition as a prime stimulus to the achievement of maximum production, distribution and employment in a mixed system of public and private enterprise. To this end, the legislation seeks to eliminate certain practices in restraint of trade, and to overcome the negative effects of concentration, both of which tend to prevent the economic resources of Canada from being used most effectively to the advantage of all. The Act also contains provisions against misleading advertising and deceptive marketing practices.

Until January 1, 1976, the Act had general application only to commodity production and trade, although certain services in connection with commodities and the price of insurance were also covered. In 1976 the Act was made applicable to pure services by virtue of the Stage I amendments, in the planned two-stage revision of the Act. As a result of the inclusion of services, all economic activities are now subject to the Act except those specifically exempted in whole or in part by the Act, i.e., collective bargaining activities, amateur sports and securities underwriters, or exempted as a result of other legislation, e.g., the Bank Act.

In some areas of the economy, commercial activity, including some of its competitive aspects, is subject to regulation under federal, provincial or municipal legislation. Examples may be found in the fields of marketing legislation, resources conservation and regulation of communications systems. Although such controls may restrict competition, if they are imposed pursuant to valid legislation they may provide a defence to charges under the Combines Investigation Act.

As in other years, members of the public this year sought from the Director of Investigation and Research relief against alleged violations of the Act by suppliers or competitors that, they said were jeopardizing the solvency of their businesses. To such complainants it has been stressed that the machinery of the Combines Investigation Act is not designed to provide quick relief in such situations. Its purpose is primarily to maintain a competitive environment over a longer period. Although efforts are made to expedite any inquiry, in these circumstances the time required to complete it may be too long to assist such complainants with their immediate problems. The Director, however, brought to the attention of such complainants the provisions in section 31.1, described hereafter, which permit any person to take proceedings in the ordinary civil courts to recover damages they have suffered from conduct prohibited by the Combines Investigation Act.

1. Criminal Offences and Penalties under Part V of the Act

Part V of the Act prohibits under criminal sanctions certain practices that may be generally classified as combinations to lessen competition, mergers and monopolies, specified trade practices, and misleading advertising and deceptive marketing practices.

(a) Combinations to Lessen Competition (sections 32 to 32.3)

Combinations, agreements or arrangements in relation to the supply, manufacture, production, etc., of a product to lessen competition unduly are prohibited. The essence of the offence is conspiracy but it is not necessary to prove that the combination, agreement or arrangement would be likely to eliminate, completely or virtually, competition in the market to which it relates. Bid-rigging whereby one party agrees to refrain from bidding in response to a call for tender or where there is collusion in the submission of bids is, unless made known to the tendering authority, prohibited outright with no requirement of undue lessening of competition. The implementation of a foreign directive by a company operating in Canada that gives effect to an agreement or arrangement entered into outside Canada, which would otherwise be in violation of section 32, is an offence under section 32.1. This section may not be used, however, if any proceedings have been instituted under paragraph 31.6(1)(b) referred to below. Finally, it is an offence under section 32.3 to conspire or agree to limit unreasonably the opportunities for anyone to participate in professional sport or to negotiate with the team of his or her choice. Certain matters such as the international character of the sport must be taken into account by the courts in determining whether an offence has occurred under this provision.

(b) Mergers and Monopolies

Being a party to or assisting in, or in the formation of, a merger or monopoly as defined is an offence under section 33. A merger is defined as the acquisition of control over or interest in the business of a competitor, supplier, customer or other person whereby competition would be lessened to the detriment of the public. Monopoly is defined as a situation where one or more persons substantially or completely control, in any area of Canada, the class or species of business in which the person is engaged and has operated or is likely to operate the business to the detriment of the public.

(c) Specified Trade Practices

Under section 34 it is an offence to be a party to a sale that discriminates against competitors of a purchaser of an article by granting a discount, rebate, allowance, price concession or other advantage to the purchaser that is not also available to the competitors. An offence does not occur, however, unless such a sale is part of a practice of discriminating and is in respect of a sale of articles of like quality and quantity. It is also an offence to engage in predatory pricing policies whereby products are sold at lower prices in one area of the country than in the remaining areas, or of selling at unreasonably low prices where the effect, tendency or design is to lessen competition substantially, or eliminate a competitor. In addition, section 35 prohibits the granting to a purchaser of an allowance for advertising purposes that is not offered on proportionate terms to competing purchasers.

A supplier, or a person engaged in a business that relates to credit cards, is prohibited under section 38 from attempting to influence upward or discourage the reduction of the price at which another person supplies or advertises a product; or to refuse to supply anyone because of that person's low pricing policy. It is further prohibited to attempt to induce a supplier to refuse to supply any person because of that person's low pricing policy. If a supplier indicates a retail price in an advertisement for a product, the price must be so expressed as to make it clear to any person to whose attention the advertisement comes that the product may be sold at a lower price. This section does not prohibit a supplier from affixing a price to a product supplied by him or her where the supplier makes no attempt to enforce that price.

(d) Misleading Advertising and Deceptive Marketing Practices

All representations, in any form whatever, that are false or misleading in a material respect are prohibited (paragraph 36(1)(a)).

Any materially misleading representation as to the price at which the product is ordinarily sold is prohibited. A representation as to price means the price the product ordinarily sells for in the market area, unless specified to be the advertiser's own selling price (paragraph 36(1)(d)).

When a person clearly expresses two or more prices shown on a product, its container or wrapper, etc., the product must be supplied at the lower price. This provision does not actually prohibit the existence of two or more prices, but requires that the product be offered for sale at the lower price (section 36.2).

Any advertisement of a product at a bargain price that the advertiser does not have available for sale in reasonable quantities, having regard to the nature of the market, the nature and size of the advertiser's business and the nature of the advertisement, is prohibited. The advertiser will not be liable, however, where he or she can establish that the non-availability of the product was due to circumstances beyond his or her control or that the quantity of the product obtained was reasonable, having regard to the nature of the advertisement, or that a raincheck was offered when supplies were exhausted.

The sale of any product by a retailer at a price higher than the price currently being advertised by the retailer is prohibited, and the seller is liable unless the price advertised was an error and has been corrected immediately (section 37.1).

Any contest that does not disclose the number and approximate value of prizes or important information relating to the chances of winning in the contest, that does not select participants or distribute prizes on the basis of skill or on a random basis, or in which the distribution of prizes is delayed, is prohibited (section 37.2).

Other misleading advertising and deceptive marketing practices provisions relate to performance claims, warranties, tests and testimonials, and pyramid and referral selling schemes. There are also various exclusions and limitations applicable to the provisions as well as various defences.

(e) Penalties

The offences in Part V, other than misleading advertising and deceptive marketing practices, are indictable. Section 32.1, which involves foreign directives to a Canadian affiliate to give effect to a conspiracy in restraint of trade outside Canada, provides only for a monetary penalty in the discretion of the court since only companies may be prosecuted. Section 32, which prohibits conspiracy in restraint of trade, provides for maximum penalties of \$1 000 000 or five years imprisonment or both. In the remaining provisions, the maximum term of imprisonment is two years or five years, as the case may be, or an unlimited fine at the discretion of the court. The discretion with respect to the monetary penalty is either stated expressly in the section or may be determined by reference to the Criminal Code when only a maximum term of imprisonment of two years or five years, as the case may be, for indictable offences is set out.

Offences in relation to misleading advertising and deceptive marketing practices, with three exceptions, may be prosecuted by way of summary conviction or on indictment. Where proceedings are by way of summary conviction the maximum penalties that may be imposed are \$25 000 or one year imprisonment or both. In the case of proceedings by indictment, the maximum penalties are an unlimited fine at the discretion of the court or five years imprisonment or both. The three exceptions are double ticketing, bait and switch selling and sale above advertised price, which may be prosecuted only by way of summary conviction. In the latter two the maximum penalty is \$25 000 or one year imprisonment or both, while in the case of double ticketing it is \$10 000 or one year imprisonment or both. Where proceedings for any of these offences are instituted by way of summary conviction, the time within which charges must be laid is two years.

2. Civil Reviewable Matters and Remedies under Part IV.1 of the Act

Part IV.1 of the Act applies to certain specified situations that, although not prohibited, are capable of being desirable or undesirable depending upon the particular facts of the case. The Part therefore provides that where the situation comes within the criteria set out, the

Director, if he considers that action is warranted, may make application to the Restrictive Trade Practices Commission for an order as provided in the relevant section. The Commission may, after affording the parties an opportunity to be heard, make remedial orders if appropriate.

- Refusal to deal. This provision applies where a person is substantially affected in his or her business by the refusal, the person is willing and able to meet the usual trade terms of the supplier, the product is in ample supply, and the inability to obtain supplies of the product results from insufficient competition. In such cases the Commission may order that the person be supplied or recommend to the Minister of Finance a reduction in customs duties (section 31.2).
- Consignment selling introduced by a supplier who ordinarily sells the product for resale for the purpose of controlling dealer prices or discriminating in price. The Commission may order the supplier to cease the practice (section 31.3).
- The practices of exclusive dealing, tied selling and market restriction. Exclusive dealing occurs when a purchaser is required to deal in particular products only or primarily or to refrain from dealing in specific products. Tied selling occurs when the sale of one product is tied to the sale of another. Market restriction occurs when a supplier, as a condition of sale, imposes restrictions as to the market in which his or her customer may deal. Where any of these practices is engaged in by a major supplier or is widespread in a market and competition is or is likely to be lessened substantially, the Commission may order a supplier to cease or modify such practice (section 31.4).
- The implementation in Canada of foreign judgments, decrees, orders or other processes adversely affecting competition, efficiency or trade. The Commission may prohibit such implementation in whole or in part (section 31.5).
- The making of a decision in Canada as a result of a foreign law or directive adversely affecting competition, efficiency or trade. The Commission may prohibit implementation in whole or in part (section 31.6).
- The making of a decision in Canada as a result of a communication from a person abroad where the communication is to give effect to a conspiracy, combination, agreement or arrangement entered into outside Canada that, if entered into in Canada, would have been in violation of section 32 relating to combinations unduly lessening competition. The Commission may prohibit implementation. This section may not be used against a company where proceedings have been commenced against it under section 32.1 (section 31.6).
- Refusal by a foreign supplier to supply a person in Canada by reason of the exertion of buying power outside Canada by another person. The Commission may order any person in Canada on whose behalf the buying power was exerted to sell the product at cost to the person refused, or not to deal in the product (section 31.7).

When the Commission sits under Part IV.1, the orders it may issue are binding upon the persons to whom they are addressed. Failure to comply with such an order is an offence under section 46.1 of the Act and may be prosecuted either on indictment or by way of summary conviction and is subject to a fine, imprisonment or both.

The remaining provisions of the Act are mainly concerned with procedure, administration, evidence and enforcement.

3. Procedures

The provisions of the Combines Investigation Act are applied by the Director of Investigation and Research, the Restrictive Trade Practices Commission and the courts.

(1) *Initiation and Conduct of Inquiries*

An inquiry under the Act is most frequently commenced by the Director when, through an informal complaint or otherwise, he has reason to believe that there has been a violation of

the Act or that grounds exist for the Commission to make an order under Part IV.1. Less often the Director receives a formal application for an inquiry from six persons in the form of a statutory declaration, and there is provision for the Minister to direct that an inquiry be undertaken.

Once an inquiry has begun an application may be made pursuant to section 443 of the Criminal Code for the issuance of a search warrant authorizing the search of premises and the seizure of evidence pertaining to the inquiry. The Director may, under certification of a member of the Restrictive Trade Practices Commission, require anyone to make written returns of information pertaining to the matter under inquiry. The Director may also apply to the Commission under section 17 for an order that any person be examined under oath.

The Director may, at any time, discontinue an inquiry that does not justify further inquiry. He is required, however, to report on any such discontinuance to the Minister. Further, where the inquiry resulted from a formal application he must notify the complainants of the reasons for the discontinuance.

Where the Director believes that an offence has been or is about to be committed, he may remit the evidence obtained in an inquiry to the Attorney General of Canada for such action as the latter may decide to take, or he may pursue the matter before the Restrictive Trade Practices Commission.

(2) The Restrictive Trade Practices Commission

As a result of the 1976 amendments, the Commission has a dual role. Its first role is to act as a fact-finding and reporting body with respect to section 18 statements of evidence and section 47 general inquiries. In such matters it holds hearings at which arguments are submitted, and persons against whom an allegation has been made in the statement are allowed full opportunity to be heard in person or by counsel and the case is argued. The Commission then makes a report in writing to the Minister of Consumer and Corporate Affairs. The report is required to be made public within 30 days of its receipt. Hearings in connection with these inquiries are held in private, unless the Chairman of the Commission orders otherwise. In recent years, only a few cases have been brought to the Commission for a report (chiefly general or research inquiries) because the public interest is best served by sending the evidence, if a suspected offence is involved, direct to the Attorney General of Canada for prosecution. A list of the recent reports of the Commission and a summary of the resultant action is found in Appendix I. Proceedings completed in cases referred directly to the Attorney General are summarized in Appendix II.

The second role of the Commission is to act, pursuant to Part IV.1 of the Act, as a court of record to receive applications from the Director to review various situations that may be undesirable and to make remedial orders binding upon persons to whom they are addressed. In these proceedings the Commission is acting in a judicial capacity and is required to give reasonable opportunity to be heard to affected parties at hearings held in public unless in some particular situation the Chairman orders them closed.

(3) Enforcement

At any stage of an inquiry, whether or not the matter has been referred to the Commission and a report made thereon, the Director may submit the evidence gathered in the inquiry to the Attorney General of Canada for such action as he may be pleased to take. Each offence provision of the Act specifies whether the matter is to be prosecuted by way of summary conviction or on indictment and sets out the amount of any fine or the length of imprisonment that may be imposed. The Act also provides that prosecutions for indictable offences and certain other proceedings under the Act may be conducted in the Federal Court — Trial Division, thereby giving it concurrent jurisdiction with provincial superior courts of criminal jurisdiction, and that an appeal from a judgment of this court lies to the Federal Court of Appeal and from that court to the Supreme Court of Canada. The consent of an individual accused is, however, required before prosecution may be instituted in the Federal Court — Trial Division.

(4) *Special Remedies*

In addition to the penalties set out in Part V of the Combines Investigation Act, the Act provides certain special remedies.

(i) *Proceedings under Section 29.1*

Under section 29.1 of the Act, an interim injunction may be issued to prevent any person from doing things forbidden by the Act pending adjudication of the matter. Such an injunction may only be issued if the court is satisfied that irreparable damage will otherwise result.

(ii) *Orders of Prohibition under Section 30*

Under subsection 30(1) of the Act, a person convicted of an offence under Part V may be prohibited from the continuation or repetition of the offence or from doing anything directed towards such continuation or repetition. Where a conviction is with respect to a merger or monopoly, the order may require action to dissolve the merger or monopoly. Subsection 30(2) provides that an order may be granted in proceedings commenced by information of the Attorney General of Canada, or the Attorney General of a province, without any prosecution having been instituted where it appears that a person has done, or is likely to do, anything constituting or directed toward the commission of an offence under Part V. By virtue of subsection 30(6), a court may punish any person who contravenes or fails to comply with an order under section 30.

(iii) *Damages*

Under section 31.1 of the Act, a person who has suffered loss or damage as a result of conduct contrary to any provision of Part V of the Act, or as the result of the failure of any person to comply with an order of the Commission or a court under the Act, may sue for and recover damages equal to the amount suffered by him, together with the costs to him of the investigation and proceedings. To facilitate such private action, it is also provided that the record of any proceedings in which a person was convicted of an offence arising from any such conduct or failure is proof that the person against whom the private action is brought engaged in that conduct, and any evidence given in the proceedings as to the effect of such conduct on the plaintiff is evidence in the private action.

(iv) *Patent and Trade Mark Rights*

Section 29 of the Act provides that the Federal Court may, on the information of the Attorney General of Canada, make orders to correct misuse of patent or trade mark rights. Such orders may revoke a patent or cancel the registration of a trade mark, or prescribe lesser remedies where such rights have been used to restrain trade or injure competition in the manner described in that section.

(v) *Tariff Adjustment*

Section 28 of the Act empowers the Governor in Council to reduce or abolish the tariff on an article where it appears, as the result of an inquiry under the Act or from judicial proceedings taken pursuant to the Act, that a combination, merger, or monopoly to promote unduly the advantage of manufacturers or dealers at the expense of the public has existed and has been facilitated by the duties of customs imposed on the article.

(5) *Representations before Regulatory Boards*

Section 27.1 of the Act expressly authorizes the Director to make representations to and to call evidence before federal boards, commissions or other tribunals in order to draw to their attention considerations relevant to the maintenance of competition in connection with matters being heard before them. The Director also intervenes before provincial regulatory boards with the permission of such boards or at their request.

4. Information and Compliance Program

While the enforcement of the Combines Investigation Act depends largely upon investigation of complaints of violations received from consumers and members of the business community and from press reports, careful attention is given to the encouragement of voluntary compliance. It has been referred to in earlier annual reports as the program of compliance and is intended to be a vigorous and sustained program involving education and explanation, discussion of business problems and the giving of opinions concerning the application of the Act. As part of the program, members of the business community are invited to discuss their problems before they decide to introduce policies that might prove to be in conflict with the Combines Investigation Act. The Director of Investigation and Research has no authority to regulate business practices or to decide the law, but he tries to assist members of the business community to avoid coming into conflict with the Act by studying matters they submit to him and indicating to them whether or not the adoption of proposed plans would lead him to launch an inquiry. Businesses who consult him are not bound by any opinion he gives and remain free to adopt practices that they are prepared to have tested before the Restrictive Trade Practices Commission and the courts. The Director, similarly, cannot bind himself or his successors by such opinions and always makes it clear that the matter would be subject to review if there should be any change in the details of the proposed plan or its method of implementation. During the year, 30 formal compliance opinions were provided (not including Marketing Practices) and approximately 98 informal discussions were held.

As part of the information program, senior staff members undertook speaking engagements before trade associations and other business societies, professional associations and other groups concerned with the Act during the year. Persons who wish to obtain general information relating to the activities of the Bureau of Competition Policy or on the Combines Investigation Act can request it from the Office of Enforcement Operations of the Bureau of Competition Policy or the appropriate enforcement branch of the Bureau. Information respecting the marketing practices provisions of the Act can be obtained from the head office of the Marketing Practices Branch in Hull or any of the regional and district offices of the department. A number of publications and speeches are available to the public; a list of the more recent is provided in Appendix VI. The Marketing Practices Branch publishes a quarterly *Misleading Advertising Bulletin* containing information relating to the provisions of the Act administered by it.

CHAPTER II

CURRENT DEVELOPMENTS

1. The State of Competition

Initiatives for Economic Renewal

The Speech from the Throne to open the first session of the Thirty-third Parliament of Canada announced a new era of national reconciliation, economic renewal and social justice. The government's three-part strategy for economic renewal is to restore fiscal responsibility, remove obstacles to growth, and encourage new investment. Of particular relevance to competition are the approaches to improve the efficiency and flexibility of our capital markets, and to improve the market environment by changes in competition laws and the regulatory framework of the financial services industry. Initiatives to stimulate domestic and foreign investment are to be combined with efforts to regain Canada's reputation as a reliable and profitable place to do business. One of the government's first measures in this direction has been to introduce the Investment Canada Bill to replace the Foreign Investment Review Act in order to reduce restrictions inhibiting foreign investment.

When tabling his economic and financial statement on November 8, 1984, the Minister of Finance presented a policy paper *A New Direction for Canada: An Agenda for Economic Renewal*, which developed the strategy further. Elements to restore growth in the private sector include measures to increase reliance on market forces and the removal of obstacles to change. Reductions are planned in government intervention, through privatization of some Crown Corporations and economic deregulation. Small business, entrepreneurship and increased competitiveness have been singled out as vehicles for economic growth.

The Combines Investigation Act will complement initiatives to rely on market forces by ensuring competition is maintained in the proportionately larger private sector. A strong competition policy will also facilitate the entry and expansion of small business by ensuring that success is achieved through efficiency and productivity rather than by market power, thus contributing to the government's overall objectives of increased employment and international competitiveness.

Legislation

On April 2, 1984, the then Minister of Consumer and Corporate Affairs, the Honourable Judy Erola, introduced in the House of Commons Bill C-29, an Act to amend the Combines Investigation Act, the Bank Act and other Acts in consequence thereof. This Bill died on the Order Paper at the close of the second session of the Thirty-second Parliament.

Following his election and subsequent appointment as Minister of Consumer and Corporate Affairs, the Honourable Michel Côté stated publicly that the reform of the Combines Investigation Act was one of his highest priorities. To this end he re-activated discussions with the provinces and major interested groups from the private sector. In March 1985 a discussion paper identifying major issues for consultation was circulated by the Minister to the provinces and to representatives of business, consumers, the legal community, organized labour, farmers and academics. In requesting input from interested parties, the Minister indicated that he wished to build on past consultation efforts and would be guided in the reform of the law by the following four principles:

- (a) the law should promote the health and efficiency of the economy;
- (b) investigative powers under the law must be brought in line with the Charter of Rights and Freedoms;
- (c) the draft language of proposals needs to be simplified and clarified; and
- (d) the law must be enforceable and effective.

At year end the consultation process was ongoing.

Telecommunications

As discussed at pages 9 to 11 of the 1984 Annual Report, technological developments have had a profound impact on the basic structure of the telecommunications industry. There is now widespread recognition that competition is a feasible alternative to regulation in the markets for many telecommunications related goods and services and that it is superior from the standpoint of economic efficiency and growth.

The trend of previous years towards expanded opportunities for competition in telecommunications markets has continued with the following major developments in the past 12 months:

- (a) The CRTC has approved, on an interim basis, tariff revisions filed by Bell Canada providing for the introduction of Cellular Access Service. Bell Cellular, a Bell Canada Enterprises subsidiary, and Cantel are now prepared to commence cellular service on July 1, 1985.
- (b) The CRTC has completed its proceeding to consider an application by CNCP to enter into the provision of public long-distance service in competition with the federally regulated common carriers. The CRTC is also considering whether to permit resale and sharing of the service and facilities of these carriers.
- (c) The CRTC in a decision released in July 1984 provided for competition in "enhanced services" in which ordinary telecommunication services can be combined with the provision of information storage or processing services. In this regard the resale of carrier basic service will be permitted where it is necessary to the provision of an enhanced service.
- (d) The CRTC in November 1984 initiated a commentary proceeding concerning whether Bell Canada and B.C. Tel should be required to provide multiline telephone and data terminal equipment and related services only through a separate subsidiary.
- (e) The Department of Communications has announced a liberalization of satellite earth station licensing policy and is in the midst of its telecommunications policy review aimed at promoting competition and providing Canadian industry with opportunities for innovation.
- (f) The Federal government is considering the privatization of Crown holdings including those relating to Teleglobe, Telesat, CNCP, Terra Nova Tel and Northwestel.
- (g) In Nova Scotia and New Brunswick, the boards of commissioners of public utilities considered whether to approve the attachment of customer-owned terminal equipment to the networks of the provincial telephone companies. In Nova Scotia, the Board has concluded that terminal attachment will be permitted for all multiline systems and extensions on single line services. The New Brunswick decision is pending.

The continued dynamic growth of telecommunications markets and product and service innovation can be expected to pressure regulators and policymakers to reassess current regulatory policies and move toward even further expansion of the opportunities for competition in what is one of the largest and most rapidly expanding sectors of the Canadian economy. Any new policies that affect the telecommunications industry to a significant degree will comprise a major component of the nation's overall industrial policy over the next several decades and may have significant impact on the international competitiveness of Canadian businesses in many sectors of the economy. Accordingly, the Director will continue to expend substantial efforts in this sector.

Transport

Reference was made to changes in the nature of transport regulation in the 1984 Annual Report. This trend of regulatory reforms has continued.

Last year's report cited reviews of the economic regulation of domestic air transport, which were ongoing at the end of the fiscal year. Both these initiatives, the hearings of the Air Transport Committee of the Canadian Transport Commission into Domestic Air Fares and the Minister of Transport's interdepartmental review of economic regulation of the industry, were completed by May 1984. The changes effected by the ATC report and the policy announcement of the Minister of Transport mean that carriers now have greater pricing freedom and increased flexibility to offer competitive services. In an effort to encourage new entry, there has been a streamlining of the licensing process and greater emphasis is put on the benefits of competition in decisions on applications for new services. While there has not been a significant amount of new entry, existing carriers have expanded operations, particularly in the local, regional and transborder markets. The changes that have been implemented only affect industry operations in Southern Canada while regulation in the North has remained largely unchanged. It is expected that further reform will take place in 1985-86.

Progress was also made in reforming the economic regulation of trucking. On May 31, 1984, a Press Communiqué from the Federal-Provincial Conference of Ministers Responsible for Transportation and Highway Safety announced agreement to take immediate action on regulatory reform in the trucking industry. The Ministers developed explicit terms of reference for a working group of the Canadian Conference of Motor Transport Administrators (CCMTA). The working group, the Standing Committee on Motor Carriers, was directed to develop detailed implementation plans for regulatory reforms of extra-provincial trucking (across provincial or international boundaries). In June 1984 a representative of the Director became an *ad hoc* member of the Standing Committee.

At a later meeting of the Council of Ministers on February 27, 1985, the Standing Committee submitted its implementation plan regarding the regulatory reform package, which comprised the following: shifting the burden of proof on entry from the applicant to the respondent, eliminating rate approval, creating a list of commodities and services exempt from entry control, streamlining the licence application process, monitoring the progress of implementation of the reforms and studying the desirability of further initiatives.

Most of the provinces and territories are considering revising their legislation dealing with intra-provincial trucking to allow the implementation of the reforms in extra-provincial trucking. Some will extend the initiatives to the administration of intra-provincial trucking; others have chosen to pursue a more restrictive course. Representatives of the Director have met with officials of several provinces to clarify the application of the Combines Investigation Act in the new regulatory regime.

There have been no new initiatives to liberalize the regulation of the inter-city bus industry.

In the rail sector, the CTC conducted public hearings last fall into the effects in Canada of U.S. rate deregulation and whether legislative changes should be made to allow Canadian carriers to better compete with U.S. railways. The Canadian railways complained of losing business to U.S. competitors since the passage of the *Staggers Rail Act of 1980* in the United States, which permitted U.S. railways to enter into confidential contracts with shippers. In Canada, carriers are required to file rates publicly and are forbidden to offer rebates or discounts. The Director intervened in this inquiry, calling for greater intra-modal rail competition. The CTC report, released in December 1984, recommended that the *Railway Act* be amended to permit confidential contracting on transborder traffic, but that the railways should not be privy to each other's contracts. Canadian railways would continue to be able to set rates collectively for traffic not moving under confidential contracts. The CTC indicated that it was appropriate to examine and hold public hearings on whether domestic and overseas import/export traffic be given treatment similar to transborder traffic. On March 15, 1985, a Notice of Public Hearing was issued and hearings were to commence the beginning of April 1985.

Finally, the existing *Shipping Conferences Exemption Act, 1979*, which provides conferences a very broad immunity from the Combines Investigation Act, has been extended by Orders in Council until March 31, 1986, so that consultation on revising its provisions can take place. The Bureau has participated in interdepartmental discussions preparatory to the expected introduction of successor legislation. (For further details see chapter VIII.)

Financial Markets

As reported at pages 11 and 12 of the 1984 Annual Report, financial markets have experienced rapid and fundamental changes in recent years that increasingly challenge the validity of the industry's four-pillar structure. Regulators and policymakers are now endeavoring to identify the appropriate regulatory and legislative response to the prevailing pressures for change in the industry.

In the past year a number of interesting events occurred. In its November 8, 1984, policy paper *A New Direction for Canada: An Agenda for Economic Renewal*, the federal government outlined its intention to reform the regulation of our financial system. As of March 31, 1985, the Department of Finance, having completed a policy review, was expected to release a document in the spring containing proposals for new financial institutions regulations.

The Ontario government also undertook an evaluation of the prevailing rules governing financial institutions. On June 13, 1984, the Ontario Task Force on Financial Institutions was appointed, headed by Stefan Dupré, with a mandate to examine the organization and operation of financial institutions in the province and to determine whether pressures on the financial system might require government action. On December 28, 1984, the Task Force submitted its Interim Report to the Ontario government, and made several initial recommendations for immediate action, including proposed revisions to the conflict of interest provisions in the Trust and Loan Corporations Act. In its report the Task Force also extended an invitation to the public to submit comments on a number of important regulatory issues affecting the financial sector, including solvency, conflict of interest, and concentration. The Director intends to provide comments on the issues to the Task Force.

In addition, in the fall of 1984 the Director participated in public hearings held by the Ontario Securities Commission (OSC) on the regulation and ownership of market intermediaries in Ontario. In February 1985 the OSC submitted its report to the Ontario Minister of Consumer and Commercial Relations recommending removal of the prevailing exemptions from registration of specified financial institutions and others and increasing the level of permissible non-resident participation in the Ontario securities industry.

The Director expects to continue to contribute to both federal and provincial regulatory reform initiatives in the coming year.

Access to Markets

Early in 1985 the government issued its discussion paper, *How to Secure and Enhance Canadian Access to Export Markets*. This paper was an outgrowth of its November 8, 1984, policy paper *A New Direction for Canada: An Agenda for Economic Renewal*. In the latter document the government indicated that it:

will examine, as a matter of priority, and in close consultation with the provinces and the private sector, all avenues to secure and enhance market access. This will include a careful analysis of options for bilateral trade with the United States in the light of various private sector proposals, as well as preparations for opportunities provided by multilateral trade negotiations.

Prime Minister Mulroney and President Reagan subsequently agreed at a meeting held on March 17 and 18, 1985, to examine the basis for establishing closer economic relations between Canada and the United States in conformity with the GATT. This accord, known as the Québec Declaration, charges the Minister for International Trade and his United States counterpart "to chart all possible ways to reduce and eliminate barriers to trade."

International trade is a large and rapidly growing component of Canada's national income — over 30 per cent in recent years. Exports alone account for more than three million jobs. In light of the relatively high levels of unemployment and the worldwide trend toward the adoption of measures to suppress foreign competition, it is not only essential to maintain such employment but also to expand it through the adoption of appropriate policies. Freer trade with the United States, currently accounting for over two-thirds of Canada's external trade, represents one such policy. Although trade between Canada and United States is already comparatively free, import duties remain on products where their removal could lead to mutual gains. More significantly, non-tariff barriers, including government procurement policies, technical product standards, and the threat of the use of contingency measures of protection (e.g., anti-dumping, countervail and safeguard actions), repress trade and competition significantly between the two nations.

The Director is anxious to exploit opportunities to participate in this debate, and the Bureau of Competition Policy has been designated to represent the department in interdepartmental discussions of the issues. The purpose of the Bureau's participation is to demonstrate that sharpened competition in a free trade environment can lead to improvement in the use of Canadian resources. By world standards, Canada is a relatively small industrial nation whose markets tend to be overly concentrated. Broadening access to the United States market, generally over ten times the size of the Canadian market, represents one means of alleviating this situation. At the same time, competition from United States firms in Canada would exert pressure on Canadian firms to use resources efficiently. The Bureau is particularly interested in contributing to the debate from the vantages of (i) the behavioural reaction of multinational enterprises to freer trade and the effects of freer trade on the investment decisions of such enterprises, (ii) the stimulation of production and competition resulting from the liberalization of government procurement policies and technical product standards, and (iii) moderation in the use of measures of contingency protection against producers in the two countries.

The Automobile Industry

The 1984 Annual Report outlined a number of the costs and implications for competition arising out of the continuation of the voluntary export restraint agreement for automobiles with Japan. These findings were widely reported in the press. During the period under review the government of Japan agreed to limit exports of automobiles to Canada to a range of 166,000 to 170,400 units such that the Japanese share of the Canadian market did not exceed 18 per cent.

On March 1, 1985, the United States announced that it would not seek a continuation of its voluntary restraint agreement with Japan. At the end of March, the government of Canada had not endorsed the continuation of the export restraints but rather had indicated to the government of Japan that Canada was not satisfied with the low level of Japanese investment in the Canadian auto industry, particularly in light of the substantial investments they had made in the United States.

The Director will continue to monitor developments in this industry with a view to promoting competition in price and quality between domestic and foreign producers of automobiles.

Competition in the Procurement Process

Public attention has recently focussed on government deficits and policies aimed at reducing government spending. Given the magnitude of purchases made by federal, provincial and municipal agencies, it is obvious that small decreases in costs due to increased competition will result in large dollar savings to the public. Public purchasing agencies can play an important role in ensuring that the public benefits from vigorous and active competition thereby reducing government costs.

The Bureau of Competition Policy intends to embark on a program to encourage private and public purchasing officials to take full advantage of competition in their procurement policies and procedures. This means utilizing, to the greatest extent possible, the competitive tendering process and ensuring that the tendering process itself is more competitive.

To this end, the Bureau plans over the next year to deliver a number of addresses to public officials closely involved with procurement activity. The thrust of these addresses will be two-fold. First, the Bureau will suggest a number of improvements purchasing officials can make in their procurement practices and policies that will increase the degree of competition in the procurement process. Second, the Bureau will stress the role procurement officials can play in the prevention and detection of bid-rigging.

Bid-rigging became a separate and distinct offence in 1976 as a result of amendments to the Combines Investigation Act. Prior to 1976, bid-rigging was prosecuted in Canada under the conspiracy section of the Act, which required the proof of lessening competition unduly. Since 1976 there have been five convictions under the bid-rigging provision of the Act, section 32.2. The Bureau has given the enforcement of bid-rigging a high priority. To complement this enforcement initiative, the Bureau will be dealing with purchasing groups and officials to outline the types of bid-rigging that may be encountered and to suggest methods that can be employed to detect and avoid bid-rigging activities.

The Bureau's particular interest in bid-rigging is based on the knowledge that bid-rigging is a serious crime that increases costs and reduces the incentive to be efficient. It is estimated that bid-rigging on U.S. highway construction has increased costs by \$750 million annually. Further, the U.S. General Accounting Office estimates that the cost of a project subject to bid-rigging rises by at least 10 per cent. If only five per cent of the contracts submitted on a tender basis to various Canadian government agencies were rigged, this would represent a very significant amount of goods and services purchased at inflated prices.

The Bureau's initiative over the forthcoming year under its two-pronged approach to procurement officials will be highlighted in next year's Annual Report.

2. Statistics

Table 1 presents a statistical picture of the work of the Bureau of Competition Policy during the past year in comparison with other years, excluding work related to misleading advertising and deceptive marketing practices. On receipt of each complaint of substance or inquiry in the nature of such a complaint, a file is opened, and the number of such files is the figure that appears in the table as Item 1. Some complaints give rise to very little inquiry; other cases require more attention but are discontinued at an early stage because, for lack of evidence or other reason, they do not appear to justify further inquiry. Item 2 inquiries are initiated under sections 7 and 8 of the Act by formal application of six persons. Item 3 refers to inquiries in which powers to search, to secure information or to examine witnesses have been used. Items 4 to 8 are self-explanatory.

Item 9 includes only those representations made formally by the Director under section 27.1. Item 10 includes all other representations in the nature of interventions such as representations to provincial regulatory bodies.

During the year ended March 31, 1985, 52 cases under the Act (excluding misleading advertising and deceptive marketing practices cases) were considered by the courts. These consisted of 17 proceedings commenced during the year, and 35 proceedings before the courts from previous years. Nine cases related to conspiracy under section 32, including one that also involved a charge under section 33 and two that also involved a charge under section 38; four related to bid-rigging under section 32.2; two related to price discrimination under section 34; 36 related to price maintenance or refusal to supply under section 38; and there was one case

under section 41. Twenty-one proceedings were concluded during the year and a total of \$1 059 500 in fines was imposed. One of the concluded proceedings related to section 32, and included additional charges under section 33; one related to section 32.2; one related to section 34; 17 involved price maintenance; and one involved impeding an inquiry under section 41. These proceedings are listed in Appendix II showing the products involved, persons charged, the place of trial and details of disposition.

Statistics of the work relating to misleading advertising and deceptive marketing practices are presented in Chapter VII. During the year ended March 31, 1985, 297 misleading advertising and deceptive marketing practices cases were considered by the courts. These consisted of 148 proceedings commenced during the year and 149 proceedings before the courts from previous years. This includes 30 cases that had received court consideration in previous fiscal years but were under appeal at the start of the year. There were 190 proceedings concluded during the year, 136 of which resulted in convictions and 54 in acquittals, charges withdrawn and other completions of court proceedings that were not convictions. Fines totalling \$771 695 were imposed during the year and an additional \$183 500 in fines was under appeal at the end of the year.

Table I

OPERATIONAL ACTIVITIES OF THE BUREAU OF COMPETITION
POLICY (EXCLUDING MISLEADING ADVERTISING AND DECEPTIVE
MARKETING PRACTICES PROVISIONS)

	1975- 76	1976- 77	1977- 78	1978- 79	1979- 80	1980- 81	1981- 82	1982- 83	1983- 84	1984- 85
1. Number of files opened.....	158	143	173	205	262	238	249	256	205	256
2. Formal applications for inquiries.....	4	7	5	7	7	8	9	8	2	2
3. Formal inquiries in progress at the end of the year.....	71	73	76	73	78	69	69	*	71	58
4. Inquiries disposed of by reports of discontinuance to the Minister.....	14	8	14	16	21	26	20	19	19	12
5. Inquiries referred direct to the Attorney General of Canada under section 15.....	18	26	23	*	14	24	21	33	*	24
6. Inquiries closed on the recommendation of the Attorney General of Canada.....	2	4	6	6	3	5	6	5	6	4
7. Prosecutions or other proceedings commenced.....	12	16	24	11	21	6	24	21	16	17
8. Applications under Part IV.1.....	—	—	1	1	2	0	0	1	0	0
9. Formal interventions under section 27.1.....	—	3	4	0	3	4	6	4	15	17
10. Other representations to bodies dealing with regulatory change.....	—	1	1	2	1	0	9	7	8	6

*Revised

3. Decisions, Reports and Other Matters of Special Interest

(1) Investigatory Powers

The Charter of Rights and Freedoms, particularly the right under section 8 to be "secure against unreasonable search or seizure," continued to be the focal point for challenges to provisions of the Combines Investigation Act during the year.

On September 17, 1984, the Supreme Court of Canada issued its unanimous decision in the *Southam*¹ case, declaring that subsections 10(1) and 10(3) of the Combines Investigation Act were inconsistent with section 8 of the Charter. The Court concluded that section 8 guaranteed at least the right to a *reasonable* expectation of privacy. The limitation in section 8 indicates that "an assessment must be made as to whether in a particular situation the public's interest in being left alone by government must give way to the government's interest in intruding on the individual's privacy in order to advance its goals, notably those of law enforcement." Justice Dickson (as he then was) outlined the following procedural safeguards that were to be applied to such an assessment:

- (a) Where it is feasible to obtain prior authorization, such authorization is a precondition for a valid search and seizure.
- (b) The person performing the search authorization need not be a judge, but he must at a minimum be capable of acting judicially. This means that the person must be entirely *neutral and impartial*.
- (c) The location of the constitutional balance between a justifiable expectation of privacy and the legitimate needs of the state cannot depend on the subjective appreciation of individual adjudicators. Some *objective standard* must be established.
- (d) The minimum objective standard, consistent with section 8 of the Charter for authorizing search and seizure, consists of information on oath establishing that there are reasonable and probable grounds to believe that:
 - (i) an offence has been committed; and
 - (ii) there is evidence to be found at the place of search.

The Supreme Court of Canada found that the investigatory functions of the RTPC impaired its ability to act as an impartial adjudicator exercising a judicial function. The dual roles of the RTPC did not accord with the neutrality and detachment necessary to balance the interests involved. The court concluded that, on that basis alone, the prior authorization for a search under subsection 10(3) of the Act was inadequate to satisfy the requirements of section 8 of the Charter. Consequently, any search carried out under the Act would be an unreasonable one.² Following this decision, the Crown abandoned its appeal in *Thomson Newspapers Limited et al. v. Hunter et al.* The matter of *ACL Canada Inc. et al. v. Hunter et al.* continues to stand adjourned *sine die*.³

Following the Supreme Court's decision in *Southam*, proceedings under section 24 of the Charter were initiated by parties who had been the subject of a section 10 search. The relief sought involved either the return of things seized, plus any photocopies, or a declaration that the evidence obtained on these searches was not admissible.

Three of the cases involved searches that, like those in *Southam*, had been carried out after the Charter had come into effect. During the preliminary inquiry in the *Henry Galler* case, the defendant objected to the introduction of documents seized in July 1982 under section 10 and argued that their admission into evidence would bring the administration of justice into disrepute. The Court, in refusing to exclude the documents, held that the search under section 10 of the Act was valid at the time it was conducted since, by virtue of subsection 27(2) of the Interpretation Act, resort to section 443 of the Criminal Code was precluded.³ In another case,⁴ a motion at trial to exclude evidence seized in February 1983 was granted on the basis that the search had been unreasonable.

The Federal Court of Canada was asked to decide a similar issue in the *Rossignol* case. Before the preliminary inquiry was held in this case, the defendants sought a declaration under subsection 24(1) of the Charter that the search had violated their rights under section 8, and requested the return of all documents seized in August 1982, plus photocopies. The court held that the Supreme Court's decision in *Southam* was not sufficient circumstance to warrant ordering the return of copies of documents that had been obtained pursuant to a law that was in effect at the time of the search. The court permitted the retention of those copies, which

were required for the criminal proceedings in progress, saying that to order otherwise would be tantamount to forbidding the Crown from using legally obtained evidence and would be contrary to the principles of law.⁵ The decision is under appeal but no hearing date has been set.

Three cases have been heard regarding the Director's continued retention and use of documents or copies of documents obtained through section 10 searches conducted prior to the date on which the Charter came into effect. In the *Glass and Glazing* case, an unsuccessful motion was made at trial for exclusion of the evidence under subsection 24(2) of the Charter.⁶

The two other cases involving pre-Charter searches also resulted in decisions favourable to the Crown. In the *Soft Drinks Manitoba* case, the issue of retention and use of documents (obtained on searches carried out in 1979 and 1981) was addressed in an application made prior to the preliminary inquiry. On appeal from the order of Mr. Justice Wilson of the Manitoba Court of Queen's Bench,⁷ the Manitoba Court of Appeal ruled that it was premature to make an order respecting the admissibility of this evidence. While upholding the lower court's ruling that the original documents should be returned, the Court of Appeal varied the order so as to permit retention and use of any copies made of the originals seized. In commenting on the issue of retrospectivity, Mr. Justice Matas noted that prohibiting the continued retention and use of the original documents after the Charter came into effect did not give retrospective effect to section 8.⁸ Leave to appeal to the Supreme Court of Canada was denied on March 4, 1985.

The issue of retention and use was also addressed by the Federal Court on an application prior to trial in the *Outdoor Advertising* case. The court held that the Charter does not provide a remedy with respect to retention and use of property. In dismissing the application, Mr. Justice Dube stated that the *Southam* decision does not affect searches completed prior to the coming into force of the Charter.⁹ The decision was not appealed.

The Director continued to make use of Criminal Code (section 443) search warrants for inquiries involving criminal matters, pending and subsequent to the Supreme Court of Canada's decision on the constitutionality of the Act's search and seizure provisions.¹⁰ Several challenges to both the validity and the substance of these warrants were initiated.

In the *Miles Laboratories* case, the Supreme Court of Ontario held that, since section 10 of the Act was constitutionally of no force and effect, subsection 27(2) of the Interpretation Act did not preclude the availability of section 443.¹¹ In cases where the substance of a warrant was found to be defective, the outcome varied depending on the defect. A warrant in the *Hardware* case was quashed in its entirety on the basis that a description of the informant as a "trustworthy person," without more, was insufficient to satisfy a justice that there were reasonable grounds to issue the warrant.¹² In other cases, vague descriptive terms on a warrant were found to be severable,¹³ but errors as to dates could not be similarly remedied.¹⁴ In the *Dobney Holdings* case, the British Columbia Court of Appeal held that things seized under a warrant that was subsequently quashed may be retained by the Crown if it is shown that they are required for the purposes of a prosecution, whether intended or in progress.¹⁵

In other areas relating to the Director's investigatory powers, the Federal Court of Appeal ruled in the *NEIL* case that a party subject to a subpoena *duces tecum* under section 17 of the Act could not claim privilege on the basis that the information was private and confidential.¹⁶ The appeal in the *Business Forms* case,¹⁷ referred to at page 16 of the 1984 Annual Report, is scheduled for hearing by the Saskatchewan Court of Appeal in September 1985.

(2) *Export Agreements*

One of the government's initiatives towards the prosperity of the economy is to encourage the expansion of exports. A factor in taking advantage of export opportunities is the ability of exporters to get together in consortia, joint ventures or other arrangements to combine their resources to market their products more effectively abroad. Exporters participating in such arrangements need to know how the Combines Investigation Act applies to their activities.

The Combines Investigation Act contains a specific but conditional exemption from the conspiracy provision (section 32) for agreements relating solely to exports. The origin of the export exemption and the details of the conspiracy provision itself are described in the 1981 Annual Report at pages 17-23.

In brief, subsection 32(1) of the Act prohibits agreements to lessen competition unduly. The offence is in the intent to enter into an agreement and not in the intent of the agreement itself, although it would be necessary to prove that the agreement, if carried out, would be likely to lessen competition unduly. The qualification 'unduly' is critical. Section 32 does not prohibit all agreements to lessen competition, only those that would do so to a degree considered by the courts to be undue. Typically one of the factors in judging the degree of lessening of competition has been the share of the market accounted for by the parties to the agreement, but there is no fixed rule. There have been acquittals where the market share was as high as 83 per cent, convictions where it was as low as 56 per cent.

The relevant market protected by the conspiracy provision is the domestic market. The purpose of the export exemption is not only to promote exports but also to make this clear, and the conditions attached to the exemption reinforce this by specifying that the exemption will not apply if the agreement is likely to have certain adverse effects on the domestic economy and on other Canadians participating in the export business.

The export defence, subsection 32(4), states that:

the court shall not convict the accused if the conspiracy, combination, agreement or arrangement relates only to the export of products from Canada.

The exemption is not needed if there is in any case no undue lessening of competition likely within Canada, as there would then be no illegal conspiracy. "Products" are goods and services, and "exports" must be, in a sense, "final" goods and services. Products, whether goods or services, used as inputs by other Canadian manufacturers intending to export their final product would not be considered exports themselves for the purpose of the Act. Intermediate goods and services sold directly to foreigners abroad would be considered as exports as they would be 'final' products from the Canadian perspective.

An agreement relating *only to exports* is one whose object is exports and only exports, although it may have incidental effects on the domestic market. The distinction however is not clear cut and an agreement relating to exports may be so tied up with an agreement relating to activities in the domestic market that a court might consider they amounted to a single agreement and not one that related only to exports.

The exceptions that remove the exemption are given in subsection 32(5) and state, in brief, that the exemption does not apply if the agreement does or is likely to reduce the volume of exports; injure the export business of a domestic competitor; restrict entry into the export business; or lessen competition unduly in Canada.

These conditions identify the sort of effects that might be linked to a lessening of competition in the domestic market, but *the exceptions are not offences themselves*. Rather, they are safeguards to ensure that if an agreement has certain adverse effects on the domestic market it will lose the exemption, fall into the offence provision, and be subjected to the same tests as any other agreement. For the agreement to be illegal, it would have to be proved beyond reasonable doubt that it was an agreement to lessen competition unduly within Canada.

The first condition attached to the export exemption is given in paragraph 32(5)(a), stating that the exemption does not apply if the agreement:

has resulted or is likely to result in a reduction or limitation of the volume of exports of a product.

Agreements involving consortia and joint ventures whose objective is to reduce combined marketing costs or to put together a more marketable package at a lower cost are likely to increase sales abroad rather than reduce them and so are not likely to lose the exemption on this account. This exception is more likely to apply to cartels whose members agree not to

compete with each other in order to maintain a high price in the world market. Such an agreement, by raising the world price, could result in a lower volume of sales abroad and lose the exemption. A reduction in volume of exports could be linked to competition within Canada through the effect on domestic production or on the domestic price. Whether the agreement amounted to an illegal conspiracy would then depend, for example, on whether it was also an agreement to lessen unduly production of a product or to enhance unreasonably the price thereof (paragraph 32(1)(b)).

The second exception (paragraph 32(5)(b)) applies if the agreement:

has restrained or injured or is likely to restrain or injure the export business of any domestic competitor who is not party to the conspiracy, combination, agreement or arrangement.

For the purposes of the Act, success in winning a contract or sale does not, in itself, constitute injury to a competitor. Rather, injury is likely to be associated with anticompetitive behaviour. For example, such injury could be a consortium's denying a competitor access to a product it controls, such as a pipeline or a single selling agency, when the product is crucial to the business of exporting. Similarly, undercutting non-members' prices in order to drive them out of business would be injury, although this would also be caught, apart from the agreement involved, by section 34 of the Act, which prohibits predatory pricing.

The third exception (paragraph 32(5)(c)) applies if the agreement:

has restricted or is likely to restrict any person from entering into the business of exporting products from Canada.

The distinction between this exception and the previous one is that this refers to adverse effects on potential exporters while the other refers to adverse effects on actual exporters.

The last exception removes the exemption if the agreement:

has lessened or is likely to lessen competition unduly in relation to a product in the domestic market.

This is close to describing the effect of a conspiracy as defined in the offence provision. The distinction here is that lessening competition unduly in Canada results in the loss of the exemption; a conviction requires proof beyond a reasonable doubt that there had been an agreement likely to lessen competition unduly. Membership in international cartels could result in the loss of the exemption through the exception contained in paragraph 32(5)(d) because of the likely effect on the price or availability of the cartel's products within Canada.

The intent of the export exemption is clear: to promote exports by allowing agreements in export markets providing they do not have adverse effects on competition in the domestic market. Failing to meet the conditions means, not that an offence has necessarily taken place, but that the export agreement will be assessed on the same basis as any other agreement.

A false perception of the conspiracy provision, the exemption itself, and the stringency of the exceptions may result in exporters being unnecessarily hesitant in taking advantage of opportunities to get together to sell their products abroad. Clarification of how the Combines Investigation Act applies to their actual or planned activities can be obtained through the Bureau's Program of Compliance, described in chapter I.

4. Remedies under the Combines Investigation Act

(1) Use of interim injunctions

Section 29.1 of the Act provides that, under special circumstances enumerated in that section, the Attorney General of Canada may make application to the Federal Court of Canada for an interim injunction:

... forbidding any person named in the application from doing any act or thing that it appears to the court may constitute or be directed toward the commission of an offence

[under Part V of the Act] pending the commencement or completion of a prosecution or proceedings under subsection 30(2) against the person.

In March 1985 the Director became aware of the attempted takeover of Fathom Oceanology Limited by Fleet Aerospace Corporation (further details relating to the background to this merger may be found in Chapter III). The Director initiated an inquiry into the matter and information gathered during the course of conducting the inquiry provided reason to believe that the consummation of the merger would be contrary to section 33 of the Act. In an attempt to delay any material changes in the operation of Fathom instituted by Fleet, pending the possible commencement of proceedings under subsection 30(2), the Attorney General of Canada made application to the Federal Court for an interim injunction under section 29.1 of the Act to prevent Fleet from, among other things, exercising any rights of ownership in any of the shares of Fathom which it had acquired as a result of the takeover offer.

On March 29, 1985, Mr. Justice Muldoon rendered his decision on the application filed by the Attorney General. In giving his reasons for judgment the Justice accepted the Attorney General's premise that Fleet had acquired majority control of Fathom, an essential element of section 33; however, he ruled that the competition between the companies was embryonic at most and on that basis:

... [o]n the material before the court, it is more speculative than reasonable and probable that the acquisition of shares will lessen competition in the near future.

Mr. Justice Muldoon also suggested that the Attorney General had not furnished sufficient evidence that any lessening of competition resulting from the merger would likely be detrimental to the public.

Based on these findings the Justice denied the application for the interim injunction stating that the applicant had

... not provided clear and cogent reasonable and probable grounds for an injunction pursuant to section 29.1...

This application was the second such action instituted by the Attorney General under section 29.1 of the Act. The earlier use of this section occurred in a liquid bleach inquiry involving paragraphs 34(1)(b) and 34(1)(c).

On June 29, 1979, an Information containing one count under each of the above two paragraphs was laid against Bristol-Myers Canada Limited. On July 24, 1979, the Attorney General of Canada applied to the Supreme Court of Ontario for an interim injunction forbidding Bristol-Myers from continuing to charge the alleged predatory prices for its private label and generic liquid bleach in Ontario until the conclusion of the pending prosecution.

As a result of short-term undertakings by Bristol-Myers, the Attorney General consented to the adjournment of the section 29.1 application, *sine die*, on August 9, 1979, October 24, 1979, and January 15, 1980. After the evidence of witnesses at the preliminary hearing in November 1980, the Attorney General decided to withdraw the charges against Bristol-Myers and the interim injunction application was not pursued further.

Consequently, the application in the Fleet/Fathom matter was the first section 29.1 interim injunction action to be actually adjudicated. Mr. Justice Muldoon's decision not to grant the injunction in this particular matter was based on the fact situation presented to the Court. As the Justice observed in his closing comments, the section remains a valuable instrument for the prevention of the economic and commercial offences described in the Act and the dismissal of the application would not foreclose the use of this procedure by the Attorney General in future matters.

(2) Orders of Prohibition

Subsection 30(1) of the Act provides that upon conviction of an offence under Part V the court may at the time of the conviction, on the application of the Attorney General of Canada, prohibit the continuation or repetition of the offence or the doing of any act or thing by the

person convicted or any other person, directed toward the continuation or repetition of the offence in addition to any other penalty imposed on the person convicted.

In addition, subsection 31(1) of the Act provides that where a person is convicted of an offence under Part V:

... the court before whom such person was convicted and sentenced may, from time to time within three years thereafter, require the convicted person to submit such information with respect to the business of such person as the court deems advisable, and without restricting the generality of the foregoing the court may require a full disclosure of all transactions, operations or activities since the date of the offence under or with respect to any contracts, agreements or arrangements, actual or tacit, that the convicted person may at any time have entered into with any other person touching or concerning the business of the person convicted.

Fines imposed in combines cases are often accompanied by Orders of Prohibition aimed at concluding the anti-competitive activities and at requiring pro-competitive practices on the part of the accused. An example of a comprehensive and far-reaching Order, granted in the *Used Household Goods* case, was outlined at page 24 of the 1984 Annual Report.

During the period under review two additional Orders of note were issued by the courts in the *Simmons Mattresses* and *Outdoor Advertising* cases.

(a) *Simmons Mattresses*

On October 15, 1984, Simmons Limited pleaded guilty to seven counts of price maintenance under section 38 of the Act, two counts of price maintenance covered by a similar provision in previous legislation and two violations of price discrimination under paragraph 34(1)(a) of the Act. The guilty plea by Simmons Limited to the two counts of price discrimination represents the first successful prosecution under paragraph 34(1)(a) of the Act. Further details with respect to these inquiries appear in chapter III.

Upon the application of the Attorney General of Canada for an order pursuant to the provisions of subsection 30(1) and subsection 31(1), the Provincial Court of Ontario granted an Order that, in addition to prohibiting the continuation or repetition of the offences, requires Simmons Limited to provide to the Director, for a period of three years, specified information with respect to any rebate plan implemented by Simmons Limited. Paragraph 6 of the Order reads as follows:

AND THIS COURT DOES FURTHER SPECIFICALLY direct that SIMMONS LIMITED-SIMMONS LIMITÉE provide to the Director of Investigation and Research, appointed pursuant to the provisions of the *Combines Investigation Act*, for a period of three (3) years from the date of this Order, and within sixty (60) days of implementation, a detailed description and explanation of each plan implemented by the Corporation whereby a discount, rebate, allowance, price concession or other advantage is granted to a purchaser of product from the Corporation; provided that such reporting requirement shall not extend to any discount, rebate, allowance, price concession or other advantage implemented by the Corporation as a temporary expedient in response to competition in the market in the sale and distribution of any products supplied by the said Corporation.

The full text of the Order is set out in Appendix IX.

The inclusion of this unique provision in the Order of Prohibition will permit the Director to monitor the activities of the company over a three-year period and to advise and counsel those officials responsible for establishing rebate plans with respect to the applicability of paragraph 34(1)(a) to any plans they intend to introduce.

(b) *Outdoor Advertising*

On February 11, 1985, the Supreme Court of Ontario granted an extensive prohibition order following a plea of guilty by Mediacom Inc., Seaboard Advertising Co. Ltd. and HOAL

Investments Ltd. to a conspiracy charge in the sale of outdoor poster panel space and outdoor printed posters in Canada, and the imposition of fines of \$400 000, \$200 000 and \$100 000, respectively.

The conspiracy consisted of several interlocking agreements between the accused and unindicted co-conspirators including:

- (a) An agreement to divide the solicitation of national and regional advertising business from advertisers on a territorial basis. By this agreement the Mediacom organization was granted the sole right to solicit all sales from national advertisers located in Ontario, Québec, Manitoba, Saskatchewan, Nova Scotia and New Brunswick. The HOAL organization had sales responsibility for Alberta while the Seaboard organization was the sole solicitor in British Columbia. The result of these agreements was that each company solicited national sales only in its allocated area and did not compete in the other's allocated territory.
- (b) An agreement to divide the ownership and operation of outdoor posters and panels on a territorial basis. The basis of this agreement was that each accused agreed not to own or operate poster panels in the other's allocated geographical area. In addition the accused acted to prevent any other party from owning or operating outdoor poster panels in their territory with the result that, with very limited exceptions, there were no competing outdoor poster panel companies operating in any one area of Canada.
- (c) An agreement to set industry-wide price discounts.

The Order, in addition to prohibiting any acts directed towards the continuation or repetition of the offence, is directed towards fostering competition in the industry and facilitating the entry of firms into the various levels of operation of the industry. These areas include outdoor poster printing, the sale of outdoor poster panel space by individual poster plant operators and national sales representatives (companies acting as agents of the plant operator for the sale of national advertising placed by advertisers and advertising agencies).

To further encourage competition in the various markets the Order contains certain specific prohibitions. One clause prohibits the companies from selling outdoor printed posters and outdoor poster panel space in any integrated fashion, other than as a separate product, except that the companies are allowed to offer a reasonable rebate based on printing costs which will allow an advertiser the opportunity to obtain printing services elsewhere. The Order also prohibits the companies from unreasonably refusing to act as national sales representatives of any plant operator in Canada. In addition, the companies cannot unreasonably refuse to sell their available outdoor poster panel space to advertisers or to the advertisers' agents. The Order also directs the companies to terminate all exclusive agreements among themselves and all such agreements with individual plant operators in Canada, thereby removing a significant barrier to entry into, and competition within, the various sectors of the industry.

The Order also includes monitoring provisions to allow the Director access to information of the companies to ensure compliance with the provisions of the Order. The text of the Order appears in Appendix IX.

FOOTNOTES

1. *Hunter, Director of Investigation and Research v. Southam Inc.*, [1984] 2 S.C.R. 145, 11 D.L.R. (4th) 641.
2. See 1984 Annual Report at page 16.
3. *R. v. Henry Geller Inc.*, Court of Sessions of the Peace (Montréal), Judge Jean Sirois, January 17, 1985.
4. *R. v. Alexanian & Sons Ltd.*, Ontario Provincial Court — Criminal Division (Hamilton), Judgment of Judge Zuraw on a motion heard on March 27, 1985. The Crown elected not to appeal this decision and withdrew the charges.
5. *In re Skis Rossignol Canada Ltd. et al. and Lawson A.W. Hunter et al.*, Federal Court — Trial Division, T-2812-84, Judge Pierre Dussault, February 22, 1985.
6. *R. v. L.O.F. Glass of Canada Ltd. et al.*, Supreme Court of British Columbia, CC841962 and CC842112, Judge Lander (orally), December 5, 1984.
7. *Blackwoods Beverages Ltd., Beverage Services Ltd. and Coca-Cola Ltd. v. The Queen, Lawson A.W. Hunter, et al.*, Manitoba Queen's Bench, Number 3521/83, Mr. Justice Wilson, December 20, 1983.
8. *Blackwoods Beverages Ltd. et al. v. The Queen* (1984), 15 D.L.R. (4th) 231 (Man. C.A.).
9. *Jim Pattison Industries Ltd. v. The Queen* (1985), 3 C.P.R. (3d) 9 (F.C.T.D.).
10. See 1984 Annual Report pages 15-17.
11. *Miles Laboratories, et al. v. Hunter, et al.*, Supreme Court of Ontario (Toronto Motions Court), Mr. Justice Galligan, Reasons dated June 1, 1984. An appeal from this decision to the Court of Appeal was dismissed on October 9, 1984.

See also: *Canfarge Life v. Couture et al.*, Québec Superior Court, Number 550-36-22-846, Chevalier, J.S.C., Reasons dated July 4, 1984. This decision is under appeal.
12. *William Aikenhead Door & Hardware Ltd. v. Wagschal et al.*, Supreme Court of Ontario (Toronto Motions Court), Re 3089/84, Smith J. (orally), January 23, 1985. This decision is under appeal.
13. *Canfarge Life, op. cit.* (under appeal).
14. *Re Dobney Holdings et al.* British Columbia Court of Appeal, Number CA 002268, Justices Hinkson, Carrothers and Hutcheon, February 14, 1985.
15. *Dobney Foundry Ltd. v. A.G. Can.*, British Columbia Court of Appeal, No. CA 002268, Mr. Justice Eason (in Chambers), March 6, 1985. Factors to be considered in the exercise of this discretion are discussed. As the Crown was not in a position to make the necessary assertions at the hearing, the Court of Appeal ordered the return of the documents within seven days provided that, if new warrants were obtained prior to the expiration of this period, documents covered by the new warrants could be retained. A motion to stay proceedings in this case has suspended the giving effect to this Order and, as of March 31, 1985, the hearings on the motion had not taken place.
16. *Director of Investigation and Research v. R.T.P.C. and Zeigler, et al.*, Federal Court of Appeal, Number A-934/84, Justices Marceau, Heald, and Stone, Reasons dated March 22, 1985.
17. *R.L. Crain Inc. et al. v. Couture et al.* (1983), 6 D.L.R. (4th) 478, 10 C.C.C. (3d) 119 (Sask. Q.B.)

CHAPTER III

MANUFACTURING BRANCH

1. Activities

The Manufacturing Branch is responsible for the conduct of all inquiries under the Act with respect to the manufacturing sector of Canadian industry, excluding the manufacturing sectors of the pulp and paper and petroleum industries, which are the responsibility of the Resources Branch. The Manufacturing Branch is also concerned with matters relating to the construction industry.

The main function of the Branch is to undertake industrial and economic analysis based on information obtained from a broad variety of sources with respect to alleged restrictions of competition in the manufacturing sector, and to conduct inquiries into those situations where inquiry is warranted. Such analysis is for the purpose of determining whether there is reason to believe that violations of any of the provisions of Part V of the Act (with the exception of those sections relating to misleading advertising and deceptive marketing practices) have occurred or that grounds exist for the making of an order by the Commission under Part IV.1 of the Act.

The Branch is also concerned with inquiries relating to possible abuses of the rights and privileges conferred by patents and trade marks, where such abuses are related to the activities of firms in the industries for which it is responsible. It also maintains a general surveillance of competitive activities and competition policy issues in those industries so as to identify problem areas requiring analysis or investigation. From time to time it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by the Foreign Investment Review Agency.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *Soft Drinks — Manitoba*

This inquiry commenced in July 1980 as a result of information obtained by the Director. During the inquiry the records of two bottlers in three cities in Manitoba and two bottler franchising companies located in Toronto, Ontario and British Columbia were examined pursuant to section 10 of the Act.

On January 20, 1983, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 32(1)(c) and two counts under paragraph 38(1)(a) of the Act was laid at Winnipeg on July 20, 1983, against Blackwoods Beverages and Beverage Services Ltd., alleging that:

- (a) Blackwoods Beverages Ltd. and Beverage Services Ltd. conspired to lessen, unduly, competition in the supply of soft drinks in Brandon, Manitoba between March 1, 1977, and September 30, 1978;
- (b) Blackwoods Beverages Ltd. attempted, between October 1, 1979, and October 30, 1979, to influence upwards the price at which Beverage Services Ltd. sold soft drinks in Brandon, Manitoba;
- (c) Blackwoods Beverages Ltd. attempted, between October 1, 1980, and November 15, 1980, to influence upwards the price at which Beverage Services Ltd. sold soft drinks in Winnipeg, Manitoba.

On August 10, 1983, a further Information was laid against Blackwoods Beverages Ltd. and Coca-Cola Ltd. under paragraph 32(1)(c), alleging that both accused conspired to lessen, unduly, competition in the supply of soft drinks in Winnipeg, Manitoba, between February 1, 1980, and September 20, 1980.

Prior to the preliminary inquiries, which were scheduled to commence on February 13, 1984, and April 2, 1984, a motion was made on behalf of Blackwoods Beverages Ltd., Beverage Services Ltd. and Coca-Cola Ltd. pursuant to the Constitution Act, 1982. Subsequently, an order was made by the Honourable Mr. Justice Wilson of the Manitoba Court of Queen's Bench on December 20, 1983, including that:

- (a) subsections 10(1) and 10(3) of the Combines Investigation Act are of no force and effect in Manitoba;
- (b) the seizure of documents pursuant to section 10 infringed upon the accused companies' rights as guaranteed under section 8 of the Charter of Rights and Freedoms;
- (c) the documents seized are inadmissible as evidence at the preliminary inquiry;
- (d) the Information be quashed.

On March 6, 1984, a notice of appeal was filed with the Manitoba Court of Appeal. This appeal was heard on June 11, 1984. On November 20, 1984, a decision was rendered allowing the Crown to proceed and noting that while the seizures under section 10 of the Act pre-dated the Charter and by virtue of the Charter were now illegal, the admissibility of the documents should be determined at the trial when all the evidence and full argument on the subject has been heard.

On December 4, 1984, the companies filed a notice of appeal in the Supreme Court of Canada.

SECTION 32.2

(2) *Glass and Glazing — Vancouver*

This inquiry commenced in October 1979 following receipt of information by the Director alleging that a number of Vancouver area glass and glazing contractors were involved in bid-rigging. During the inquiry the records of seven firms were examined pursuant to section 10 of the Act, and in March and July 1980 hearings were held in Vancouver pursuant to section 17.

On May 15, 1981, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing four counts under section 32.2 was laid at Vancouver on May 19, 1982. The following firms were charged on one or more counts:

Coastal Glass & Aluminum Ltd.
Central Glass Products Ltd.
Bogardus, Wilson, Limited
Zimcor Company — La Compagnie Zimcor
PPG Industries Canada Ltd. — Industries PPG
Canada Ltée

The preliminary inquiry commenced on May 9, 1984, and was completed on May 24, 1984. Subsequently, the court ordered Coastal Glass & Aluminum Ltd., Central Glass Products Ltd. and Bogardus, Wilson, Limited (amended as LOF Glass of Canada Ltd.) to stand trial. PPG Industries and Zimcor were discharged. As previously reported the Supreme Court of Canada had agreed to hear the appeal of PPG Industries concerning the right to trial by jury under the Charter of Rights and Freedoms. Also, Zimcor Company had filed a statement of claim in the Federal Court — Trial Division against the Director et al. Both these actions were withdrawn following the discharge of these firms.

The trial commenced on December 3, 1984, and was concluded on December 14, 1984. On December 19, 1984, the court found Coastal Glass & Aluminum Ltd. guilty on count one (relating to the Vancouver Law Courts). The other accused were found not guilty on counts

two, three and four. Subsequently, on January 24, 1985, Coastal Glass & Aluminum Ltd. was fined \$85 000 with respect to count one.

On January 17, 1985, a notice of appeal was filed with the British Columbia Court of Appeal with respect to counts two, three and four. At the end of the fiscal year, no date had been set for the hearing of the appeal.

(3) *Geo. W. Crothers (1965) Limited and Kramer Tractor Ltd. — Caterpillar Diesel Generating Units*

This case arose out of an inquiry by the Director into the production, manufacture, importation, distribution, sale, wholesale, rental, transportation and supply of construction equipment, machinery, engines, attachments, parts and related products in Canada. During the inquiry the companies' records were examined pursuant to section 10 of the Act. In addition, hearings were held in this matter in October 1980 pursuant to section 17, at which time oral evidence was obtained from four witnesses.

The evidence obtained in this inquiry was referred to the Attorney General of Canada in January 1982. On March 22, 1983, an Information containing one count under section 32.2 was laid at Toronto against Geo. W. Crothers (1965) Limited and Kramer Tractor Ltd.

A preliminary inquiry in this matter was waived by both accused, and the trial was held in the Supreme Court of Ontario in Toronto from March 26 to 29, 1984. On March 26, 1984, Geo. W. Crothers (1965) Limited pleaded guilty and was fined \$12 500.

Kramer Tractor Ltd., upon being arraigned, entered a motion that its rights under section 7 and paragraph 11(b) of the Charter of Rights and Freedoms had been violated as a result of the delay between the commencement of the Director's inquiry and the prosecution proceedings. After hearing argument, the Court ruled that the time period envisaged by paragraph 11(b) of the Charter was the period between the laying of an Information and the commencement of trial proceedings. The time taken to investigate a matter was not relevant and the motion was accordingly dismissed. Kramer Tractor Ltd. then pleaded not guilty to the charge but on March 29, 1984, was convicted and fined \$20 000. Subsequently, Kramer Tractor appealed the conviction and fine but abandoned the appeal in December 1984.

(4) *Fencing Materials — Alberta*

This inquiry was formally commenced in May 1982 following receipt of information with respect to bid-rigging in the cities of Medicine Hat and Calgary. During the inquiry searches were carried out in June 1982 under section 10 of the Act and in November 1983 hearings were held pursuant to section 17 of the Act.

On June 18, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under subsection 32.2(2) was laid at Medicine Hat on November 28, 1984, against McLellan Supply Limited and S.F. Scott Manufacturing Co. Limited with respect to a call for tenders by the city of Medicine Hat. The preliminary inquiry was to commence May 15, 1985.

(5) *Steel — Montréal*

This inquiry commenced in July 1983 following receipt of a complaint alleging bid-rigging with respect to the sale and supply of reinforced steel. During the inquiry the corporate records of six companies were examined.

On January 9, 1985, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under subsection 32.2(2) was laid at Montréal on January 11, 1985, against Acier d'Armature de Montréal (1979) Ltée, Acier Gendron Ltée, Fertek Inc., Armature L & V Ltée, Ferneuf G & S Inc.

At the preliminary inquiry held on March 6, 1985, three of the accused companies pleaded guilty. Fertek Inc. and Ferneuf G & S Inc. were fined \$15 000 each and Acier

d'Armature de Montréal (1979) Ltée received a \$2 000 fine. An Order of Prohibition was issued against all three companies.

The preliminary inquiry for Acier Gendron Ltée was held on March 27, 1985, and resulted in a guilty plea. Sentencing was scheduled for April 12, 1985. The preliminary inquiry for Armature L & V Ltée was to begin early in the fiscal year.

SECTION 34

(6) *Simmons Limited — Simmons Limitée — Bedding, Upholstered Products and Case Goods*

This inquiry was formally commenced in December 1980 during an examination of the records of Simmons Limited in relation to an inquiry under section 38 of the Act. During the investigation into section 38 matters (see item (21)), the Director was provided with reason to believe that Simmons Limited was acting in a manner contrary to paragraph 34(1)(a) of the Act. Pursuant to section 10 of the Act, the records of the firm were examined during December 1980, March 1981 and September 1982.

On September 22, 1983, the evidence obtained in the matter was referred to the Attorney General of Canada, and on November 17, 1983, an Information containing two counts under paragraph 34(1)(a) was laid at Brampton, Ontario. On October 15, 1984, Simmons Limited pleaded guilty and was fined \$15 000 on each count. In addition, a Prohibition Order was issued directing the company, for a period of three years, to provide the Director with a detailed description and explanation of each plan implemented by the company whereby any type of rebate is granted to a purchaser.

The text of the Order is set out in Appendix IX.

SECTION 38

(7) *Meubles Daveluyville Ltée — Furniture (Hull)*

This inquiry commenced in August 1980 following receipt of a complaint from a retailer in Hull, Québec, that Meubles Daveluyville Ltée had decided to close his account because of his low pricing policy. In August 1980, the records of the company were examined.

On May 25, 1981, the evidence obtained in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) of the Act was laid at Hull on December 4, 1981, against Meubles Daveluyville Ltée. At the preliminary inquiry which took place on May 21, 1982, the accused was ordered to stand trial only on the count under paragraph 38(1)(b). On April 11, 1984, the company pleaded guilty and was fined \$10 000.

(8) *Euroclean Canada Inc. — Husqvarna Sewing Machines*

This inquiry commenced in November 1979 following receipt of a complaint alleging a policy of resale price maintenance by Dometic Canada Inc. (now Euroclean Canada Inc.). During the inquiry the records of the company were examined pursuant to section 10 of the Act.

On October 27, 1981, the evidence in this inquiry was referred to the Attorney General of Canada. On April 20, 1982, an Information containing four counts under subsection 38(1) was laid at Kitchener, Ontario, against Euroclean Canada Inc. The preliminary inquiry took place on October 12, 1982, and the accused company was ordered to stand trial on three counts.

The trial was set for October 1983 but was postponed pending the determination by the Supreme Court of Canada in *R. v. Marine Industries Ltd.* of a corporation's liability for criminal acts of its employees and directors. At the end of the fiscal year, the court had not rendered a decision in this matter.

(9) *Bigelow Canada Limited — Carpets*

This inquiry commenced in March 1981 following receipt of a complaint from a retailer alleging that a representative of Bigelow Canada Limited had discriminated against him because of his low pricing policy. In April 1981, the records of the company were examined pursuant to section 10 of the Act, and in October 1981 hearings for the taking of oral evidence were held in Québec City.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 30, 1982. An Information containing one count under paragraph 38(1)(b) was laid at Québec on August 12, 1982, against Bigelow Canada Limited.

The preliminary inquiry in this matter commenced on March 31, 1983, and the accused was ordered to stand trial. On June 8, 1984, the accused was acquitted. The Crown appealed the decision on July 5, 1984.

(10) *Sealy (Western) Ltd; Seebee Investments (1966) Ltd. — Mattresses and Box Springs*

This inquiry commenced in December 1977 following receipt of several complaints from consumers regarding their inability to negotiate for a discount from the suggested retail price of the various models of mattresses and box springs that comprise the "Posturepedic" brand of bedding. During the period in question, these products were manufactured exclusively in western Canada under an exclusive licence granted by Sealy Canada Ltd./Ltée of Toronto, by either Sealy (Western) Ltd. or its predecessor company, Seebee Investments (1966) Ltd., both of Edmonton. During the inquiry the companies' records were examined pursuant to section 10 of the Act.

On July 20, 1981, the evidence in this matter was referred to the Attorney General of Canada. At Edmonton on November 9, 1982, an Information containing one count under the former subsection 38(2) and one count under paragraph 38(1)(a) of the Act was laid against Sealy (Western) Ltd; and an Information containing one count under the former subsection 38(3) of the Act was laid against Seebee Investments (1966) Ltd. Each charge names Sealy Canada Ltd./Ltée of Toronto as party or privy to the offence.

The preliminary inquiry set for May 25, 1983, was postponed until July 19, 1983, at which time a stay of proceedings was entered with respect to both companies. On July 19, 1984, the stay was allowed to expire.

(11) *Mission Electronics North American Corporation — Stereo Equipment*

This inquiry commenced in July 1981 following receipt of a complaint from a Toronto stereo retailer alleging that Mission Electronics had attempted to influence upward the price at which he was selling Mission speakers and that Mission Electronics thereafter refused him supply because of his practice of discounting the price of the product. During the inquiry the records of the company were examined pursuant to section 10 of the Act. In May 1982, a second complaint was received from another Toronto stereo retailer alleging that Mission Electronics refused to supply him because of his low pricing policy.

On June 28, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On December 9, 1982, an Information containing three counts under subsection 38(1) was laid at Toronto against Mission Electronics North American Corporation.

At the preliminary inquiry held in Toronto on June 13, 1983, the accused was ordered to stand trial on all three counts. On May 14, 1984, the company pleaded guilty on one count and was fined \$5 000. The remaining counts were withdrawn.

(12) *The Camrost Group Limited — Condominiums*

This inquiry commenced in March 1982 following receipt of a complaint alleging that The Camrost Group Limited was engaged in resale price maintenance with respect to condominiums being offered for resale in One Parklane, a Toronto condominium development.

The corporate records of the developer were examined in March 1982 pursuant to section 10 of the Act.

On November 25, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. An Information containing seven counts under paragraph 38(1)(a) was laid at Toronto on January 19, 1983, against The Camroost Group Limited. The preliminary inquiry was held on February 6, 1984, at which time the Crown withdrew one count. The accused was ordered to stand trial on three of the six remaining counts. The trial was scheduled to commence on April 29, 1985.

(13) *H.A. Imports of Canada Ltd. — Sportswear*

This inquiry was initiated in June 1982 following receipt of a complaint from a Toronto retailer alleging that Omar Imports of Canada, a division of H.A. Imports of Canada Ltd., had refused to supply the retailer with "Lacoste" brand sportswear because of the retailer's low pricing policy. On August 4, 1982, the records of the manufacturer were examined pursuant to section 10 of the Act.

On September 8, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. An Information containing two counts under paragraph 38(1)(a) and one count under paragraph 38(1)(b) was laid at Toronto on February 10, 1983. The preliminary inquiry was held in Toronto on January 3, 1984, and the company was ordered to stand trial on all three counts. On December 3, 1984, the accused pleaded guilty to one count under paragraph 38(1)(a) and was fined \$5 000. The remaining counts were dismissed.

(14) *Salomon Sports Canada Ltd./Ltée — Skis and Ski Equipment*

This inquiry commenced on August 5, 1981, following receipt of complaints alleging that Salomon Sports Canada Ltd./Ltée had refused to supply certain retailers because of the retailers' low pricing policies and that Salomon had also attempted to influence upward the price at which certain retailers sold Salomon's products. During the inquiry the corporate records were examined pursuant to section 10 of the Act. In April 1982 hearings under section 17 were conducted in Vancouver during which five witnesses testified under oath.

On August 9, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On February 16, 1983, an Information was laid at Montréal against Salomon Sports Canada Ltd./Ltée, containing five counts under paragraph 38(1)(a) and four counts under paragraph 38(1)(b).

Following the preliminary inquiry in May 1983 the accused was ordered to stand trial on eight counts. The trial commenced on October 24, 1983, and was concluded on November 25, 1983. On March 19, 1984, the accused was convicted on seven counts and on May 17, 1984, was fined a total of \$100 000. In addition, an Order of Prohibition was imposed. The company has appealed the conviction on three counts.

(15) *Cody-Food Equipment Ltd. — Food-Service Equipment*

This inquiry commenced in June 1981 following receipt of a complaint from a kitchen equipment dealer in Moncton alleging that he had been refused supply of food-service equipment products by Durable Equipment Limited of Toronto because of his low pricing policy. The complainant also alleged that a competing dealer, Cody-Food Equipment Ltd. of Saint John, New Brunswick, had induced Durable Equipment Limited into refusing to supply the products to the complainant. During the inquiry the records of the two companies were examined pursuant to section 10 of the Act.

On November 2, 1982, the evidence obtained in this inquiry was referred to the Attorney General of Canada. On March 2, 1983, an Information was laid at Toronto containing one count under paragraph 38(1)(b) against both Durable Equipment Limited and Cody-Food Equipment Ltd., and one count under subsection 38(6) against Cody-Food Equipment Ltd.

At the preliminary inquiry held in Toronto on December 19, 1983, Durable Equipment Limited was ordered to stand trial on the count under paragraph 38(1)(b) and Cody-Food

Equipment Ltd. was ordered to stand trial on both counts. On February 24, 1984, a stay of proceedings was entered in respect of the count against Durable Equipment Limited and on February 24, 1985, the stay was allowed to expire.

On June 4, 1984, Cody-Food Equipment Ltd. pleaded guilty to the count under subsection 38(6). The Crown presented no evidence on the count under paragraph 38(1)(b). On June 20, 1984, Cody-Food was fined \$9 000 and an Order of Prohibition was imposed. Because Cody-Food was a dissolved company as of January 2, 1984, the Court ordered that the fine be paid by its sole shareholder, Cassidy's Ltd. On the basis that subsection 30(1) of the Act allows for the imposition of an Order of Prohibition on "the person convicted or any other person," the Court imposed the order on Cassidy's Ltd.

(16) *Esteban Designs Inc. — Jeans*

This inquiry was initiated in November 1982 following a complaint from a retailer in Prescott, Ontario, alleging that Esteban Designs Inc. and a Mr. L. Clements, an independent sales agent for that company, were attempting to influence upward the retailer's selling price on Esteban jeans. On November 17, 1982, the premises of Esteban Designs Inc., and those of Mr. L. Clements, carrying on business as Larry Clements Enterprises Ltd., were searched pursuant to section 10 of the Act.

On November 30, 1982, the evidence obtained during the inquiry was referred to the Attorney General of Canada. On March 25, 1983, an Information containing one count under paragraph 38(1)(a) was laid at Ottawa against Esteban Designs Inc. and Mr. Clements.

A defence motion to quash the Information on jurisdictional grounds was filed on June 2, 1983. A revised Information was laid on September 7, 1983. However, following the death in December 1983 of the principal shareholder and president of Esteban Designs Inc., it was decided that no useful purpose would be served by continuing the prosecution. Accordingly, a stay of proceedings was entered on February 15, 1984, and on February 15, 1985, the stay was allowed to expire.

(17) *Stereo Components*

This inquiry commenced in January 1979 following receipt of complaints alleging that E.S. Gould Marketing Co. Ltd., Harmon-Kardon of Canada Ltd. and James B. Lansing Sound Canada Limited were engaged in resale price maintenance. During the inquiry company records were examined pursuant to section 10 of the Act and a number of stereo retailers were interviewed.

On April 14, 1982, the evidence in this inquiry was referred to the Attorney General of Canada. On March 31, 1983, an Information containing two counts under paragraph 38(1)(a) and two counts under paragraph 38(1)(b) was laid at Toronto. Harmon-Kardon of Canada Ltd. and James B. Lansing Sound Canada Limited were each named in two counts together with E.S. Gould Marketing Co. Ltd. On April 11, 1984, E.S. Gould pleaded guilty to one count under each of paragraphs 38(1)(a) and 38(1)(b) and was fined \$15 000 on each count. The remaining counts against E.S. Gould and the counts against the other two accused were withdrawn. E.S. Gould also pleaded guilty to breaching an Order of Prohibition issued in 1977 and was fined \$20 000.

(18) *Sony of Canada Ltd. — Stereophonic Equipment*

This inquiry commenced in April 1982 following receipt of a complaint from a Toronto retailer alleging that Sony of Canada Ltd. had refused to supply him with stereophonic products due to his low pricing policy. During the inquiry the company's records were examined pursuant to section 10 of the Act.

On March 25, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On July 19, 1983, an Information containing six counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Ottawa against Sony of Canada Ltd. On September 24, 1984, the accused was ordered to stand trial on two counts under each of paragraphs 38(1)(a) and (b).

In November 1984 counsel for Sony filed a motion to quash the committals to trial on one count under each of paragraphs 38(1)(a) and 38(1)(b). The motion was heard in Toronto on February 5, 1985, and the presiding judge granted the motion. The Attorney General filed notice of appeal in respect of the decision on February 8, 1985. The appeal was scheduled to be heard on June 17, 1985.

(19) *Rainbow Jeans*

This inquiry commenced in February 1981 following receipt of a complaint from a retailer of casual clothing alleging that the Rainbow Jean Company Limited of Montréal, Québec, had attempted to influence upward the price at which he sold Rainbow-brand jeans.

Searches were conducted in February 1981 in Montréal and Charlottetown, Prince Edward Island, pursuant to section 10 of the Act. The matter was referred to the Attorney General of Canada in March 1982. An Information containing one count under paragraph 38(1)(a) was laid at Charlottetown on August 16, 1983, against Rainbow Jean Company Limited.

On September 19, 1983, defence counsel moved that the Information be quashed on grounds of duplicity, arguing that it was not specified which method (i.e., threat, promise or like means) had been used by the accused in committing the alleged offence. On October 17, 1983, the motion was dismissed. The accused then pleaded not guilty and elected trial by judge and jury. After argument on this point, defence counsel agreed that this option was not available to the accused and withdrew the election. The preliminary inquiry was scheduled for January 18, 1984.

At the preliminary inquiry, defence counsel made a motion to quash the Information under section 24 of the Charter of Rights and Freedoms, alleging a violation of the accused's right under paragraph 11(a) thereof to be informed without unreasonable delay of the specific offence with which the accused was charged. Defence counsel contended that the time span before the laying of charges should be considered relevant in determining whether or not there had been an unreasonable delay. However, on February 15, 1984, the Court determined that the relevant period began only with the laying of charges and ruled that no unreasonable delay had in fact occurred in this instance.

The preliminary inquiry was completed on June 20, 1984, and the accused was ordered to stand trial. The trial was held on February 27 and 28, 1985, and at the end of the fiscal year, the decision of the court was pending.

(20) *Ziggy Jeans*

This inquiry commenced in February 1981 following receipt of a complaint from a retailer of casual clothing alleging that Lewis-Choi Enterprises Ltd., the sales agent for Western Glove Works Limited of Winnipeg, Manitoba, had refused to supply Ziggy-brand jeans to the retailer because of his low pricing policy.

Searches were conducted in February 1981 in Winnipeg, Charlottetown and Montréal, pursuant to section 10 of the Act. The matter was referred to the Attorney General of Canada in March 1982. An Information containing one count under paragraph 38(1)(b) was laid at Charlottetown against Western Glove Works Limited and Lewis-Choi Enterprises Ltd. jointly on August 16, 1983.

Subsequently, it was discovered that the time span in the Information included a period preceding incorporation of the company and it would, therefore, be necessary to charge one of the principal owners of Lewis-Choi Enterprises. This has not yet been done, due to discussions between defence and prosecution counsel on the disposition of the matter. The discussions were still in progress at the end of the fiscal year.

(21) *Simmons Limited — Simmons Limitée — Bedding*

This inquiry was formally commenced in November 1980 following the accumulation of complaints from both consumers and retailers in Moncton, Montréal, Ottawa and Vancouver, which gave the Director reason to believe that Simmons Limited was acting in a manner contrary to paragraphs 38(1)(a) and 38(1)(b) of the Act. Pursuant to section 10, the records of Simmons Limited were examined in December 1980, March 1981 and September 1982.

The evidence in this matter was referred to the Attorney General of Canada on March 7, 1983. An Information containing 23 counts under the present section 38 and its pre-1971 predecessor was laid at Brampton, Ontario, on September 30, 1983. On October 15, 1984, the company pleaded guilty to six counts under paragraph 38(1)(a) and one count under paragraph 38(1)(b) of the present provisions and one count under paragraph 34(2)(b) and one count under subparagraph 34(3)(b)(i) of the Act as it read prior to 1971. The company was fined \$15 000 on the first count and \$13 125 on the remaining eight counts for a total fine of \$120 000. The remaining 14 counts were withdrawn by the Crown. In addition, the court imposed an Order of Prohibition, the text of which is set out in Appendix IX. (See also item (6) for the disposition of charges against Simmons Limited under paragraph 34(1)(a).)

(22) *Floor Coverings — Western Canada*

This inquiry commenced in August 1980 following receipt of a complaint from a carpet retailer that he was having difficulty entering an advantageous retail marketing program run by Armstrong World Industries Canada Ltd. — Les Industries Mondiales Armstrong Canada Ltée., known as the Floor Fashion Centre Program (FFC). In his complaint the retailer alleged that his problems were due to his low pricing policy.

During the inquiry the corporate records of Armstrong were examined pursuant to section 10 of the Act. In late November and early December 1982, examinations under section 17 of the Act were conducted in Edmonton. The evidence indicated that Armstrong had refused to supply products unique to FFC accounts and otherwise discriminated against the complainant because of his low pricing policy. The evidence also indicated that Beach Bros. Floor Coverings Ltd., an Edmonton retailer, had attempted to persuade Armstrong not to supply the complainant because of the latter's low pricing policy.

On March 10, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On October 3, 1983, an Information containing one count under paragraph 38(1)(b) was laid at Edmonton against Armstrong and an additional Information containing one count under subsection 38(6) was laid against Beach Bros.

The preliminary inquiry for Armstrong and Beach Bros. took place on April 16, 1984, and May 8, 1984, respectively, and in each case the accused company was discharged.

(23) *Skis — Vancouver*

This inquiry commenced in February 1983 following receipt of information that S.P.D. Agencies Ltd. (now Dave Downie Sales Agency Inc.), the British Columbia distributor of Elan Skis, had attempted to influence upward the price at which a retailer had offered to sell a product, and then subsequently refused to continue supplying the retailer because of the latter's low pricing policy. On February 4, 1983, the corporate records were examined pursuant to section 10 of the Act.

On August 30, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On October 11, 1983, an Information containing two counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Vancouver against Dave Downie Sales Agency Inc., Morley Pitcher and David Downie. The trial took place between October 29 and November 2, 1984, and on November 14, 1984, the accused were found guilty on the count under paragraph 38(1)(a) and acquitted on the count under paragraph 38(1)(b). On November 16, 1984, the company was fined \$5 000, Mr. Pitcher was fined \$500 and Mr. Downie was granted an absolute discharge.

(24) *Great West Imports Ltd. — Musical Instruments*

This inquiry commenced in September 1982 following receipt of a complaint from a Winnipeg retailer alleging that Great West Imports Ltd. had refused to supply him with musical instruments due to his low pricing policy. During the inquiry the company's records were examined pursuant to section 10 of the Act.

On June 8, 1983, the evidence in this inquiry was referred to the Attorney General of Canada. On November 23, 1983, an Information containing two counts under paragraph 38(1)(b) of the Act was laid at Winnipeg against Great West Imports Ltd. On September 28, 1984, the company was convicted on one count and fined \$1 000. The second count was dismissed.

(25) *Woodstoves — British Columbia*

This inquiry commenced in February 1982 following receipt of a complaint from a retailer in British Columbia that Northwest Stoves Ltd. had refused to supply or otherwise discriminated against him in regard to woodstoves, and had also attempted to influence upward the price at which he sold woodstoves. During the inquiry the corporate records were examined pursuant to section 10 of the Act.

On March 17, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. On February 13, 1984, an Information was laid at North Vancouver containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) against both Northwest and Wayne Rourke, the company's president. On May 10, 1984, following the preliminary inquiry, both accused were ordered to stand trial. On January 18, 1985, Northwest pleaded guilty to the count under paragraph 38(1)(a) and was fined \$3 500 and an Order of Prohibition was issued. The remaining count against the company and both counts against the individual were withdrawn.

(26) *Drospo Inc. — Leather clothing*

This inquiry commenced in March 1983 following receipt of a complaint from a retailer of leather garments for motorcyclists. The complainant alleged that Drospo Inc. had attempted to influence upward the price at which the retailer sold the product and had subsequently refused to supply the complainant because of his low pricing policy.

On January 5, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under each of paragraphs 38(1)(a) and 38(1)(b) was laid at St-Joseph de Beauce on April 24, 1984, against Drospo Inc. The preliminary inquiry was held on March 27, 1985, and the company was ordered to stand trial on both counts. The trial was scheduled to commence on June 5, 1985.

(27) *Canadian Art Prints Inc. — Art Cards*

This inquiry commenced in May 1983 following receipt of a complaint from a retail outlet alleging that Canadian Art Prints Inc. had threatened to discontinue supplying the outlet with art cards because of its low pricing policy. During the inquiry the records of the company were examined.

On September 19, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(a) was laid at Ottawa on June 12, 1984, against Canadian Art Prints Inc. The accused subsequently waived the preliminary inquiry. On January 25, 1985, the accused was found guilty and fined \$3 000.

(28) *Lori-Ann Mfg. Inc. — Women's Wear*

This inquiry commenced in March 1983 following receipt of a complaint from a retailer that the manufacturer had refused to supply him because of his low pricing policy. During the inquiry the records of the company were examined.

On September 23, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) was laid at Montréal on June 20, 1984, against Compagnie Manufacturière Lori-Ann Inc. and its agent, Les Entreprises DDN Inc. The trial was held at Montréal on December 17, 1984, and the judge reserved his decision until May 23, 1985.

(29) *MCTR Distributors Ltd. — Video cameras*

This inquiry commenced in December 1983 following a complaint from a Winnipeg retailer alleging that a distributor of video cameras had refused to supply him because of his low pricing policy. During the inquiry the records of the distributor were examined.

On March 23, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) was laid at Winnipeg on June 4, 1984, against MCTR Distributors Ltd. At the preliminary inquiry on December 11, 1984, the accused was ordered to stand trial. The trial was scheduled to commence on June 19, 1985.

(30) *Tommy & Lefebvre Investments Ltd. — Sporting Goods*

This inquiry commenced in August 1981 as a result of documents obtained in a search at the premises of Salomon Sports Canada Ltd. During the inquiry the records of the company were examined and oral evidence was obtained.

On August 10, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(a) and one count under subsection 38(6) was laid at Ottawa on July 24, 1984, against Tommy & Lefebvre Investments Ltd. and John Lennox. The preliminary inquiry was scheduled to commence on April 9, 1985.

(31) *Rossignol Skis*

This inquiry commenced in April 1982 following receipt of complaints from retailers that Skis Rossignol Canada Limitée had refused to supply them with skis because of their low pricing policy. During the inquiry the records of the company were examined.

On June 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing six counts under paragraphs 38(1)(a) and 38(1)(b) was laid at Montréal on August 1, 1984, against a federally incorporated company that had done business under the names Raymond Lanctôt Ltée and Société de Distribution Rossignol du Canada Ltée.

On January 11, 1985, the Federal Court heard a challenge to the search of the company based on the fact that the search under section 10 was conducted after the Charter of Rights and Freedoms came into force and was therefore illegal pursuant to the *Southam* decision. On February 22, 1985, the Court ruled the search invalid but allowed the Attorney General to retain possession of certain documents required for the prosecution of this case. This decision is under appeal and the preliminary inquiry in this case was scheduled for May 1985.

(32) *Toby Industries Ltd. — Towels*

This inquiry commenced in May 1981 following receipt of a complaint alleging that James B. McGregor, a division of Toby Industries Limited, had attempted to influence upward the price at which one of its retail customers sold towels which were being supplied to it by McGregor. During the inquiry the records of the manufacturer were examined.

On March 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing five counts under paragraph 38(1)(a) was laid at Toronto on July 26, 1984, against Toby Industries Ltd. At the preliminary inquiry on February 11, 1985, the accused was ordered to stand trial on all counts.

A trial date was set for August 12, 1985.

(33) *Henry Galler Inc. — Hitachi Products*

This inquiry commenced in May 1982 following receipt of complaints from two retailers alleging that Henry Galler Inc. had a policy of discouraging the advertising and sale of Hitachi products at low prices. During the inquiry the records of the company were examined.

On July 12, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(a) and two counts under paragraph 38(1)(b) was laid at Montréal on October 4, 1984, against Henry Galler Inc. Following the preliminary inquiry in January 1985, the accused was ordered to stand trial on all counts. At the outset of the trial on March 25, 1985, the company pleaded guilty to the two counts under paragraph 38(1)(b) and the Crown withdrew the count under paragraph 38(1)(a). Following argument on sentencing, the judge reserved his decision until April 23, 1985.

(34) *Mister Leonard Ltd. — Women's Wear*

This inquiry commenced in March 1983 following receipt of a complaint from a retailer alleging that Mister Leonard Ltd. had refused to supply him with women's wear because of the retailer's low pricing policy. During the inquiry the corporate records of the manufacturer and its Québec sales agent, Allan Rosenfeld Inc., were examined.

On November 9, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 38(1)(b) of the Act was laid at Montréal on January 4, 1985, against Mister Leonard Ltd. and Allan Rosenfeld Inc. On February 28, 1985, Allan Rosenfeld Inc. pleaded guilty and was fined \$10 000. The charge against the manufacturer was withdrawn.

(35) *Daniel Hechter Jeans*

This inquiry commenced in September 1981 following receipt of a complaint from a Toronto retailer that Keystone Industries (1970) Ltd. had refused further supplies of Daniel Hechter jeanswear because of the retailer's low pricing policy. During the inquiry the records of the company were examined pursuant to section 10 of the Act.

On July 12, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. On February 27, 1985, an Information containing three counts under subsection 38(1) of the Act was laid at Montréal against Keystone Industries (1970) Ltd. and French Dressing Fashions Inc. The date for the preliminary inquiry has not been set.

(36) *Calvin Klein Jeans*

This inquiry was commenced in November 1983 following receipt of complaints from two separate retailers alleging violations of section 38 by Blue Bell Canada Inc. During the inquiry, company records were taken from the premises of Blue Bell in Toronto and its Winnipeg sales agent, Michael Gravenor Agency Ltd., pursuant to section 443 of the Criminal Code.

On December 20, 1984, the evidence in the inquiry was referred to the Attorney General of Canada. On March 27, 1985, an Information was laid at Toronto containing one count under each of paragraphs 38(1)(a) and 38(1)(b). Blue Bell Canada Inc., and its vice-president of marketing, Michael Corson, were jointly charged on both counts. In addition, its Sudbury sales agent Mel Kastner was jointly charged on the count under paragraph 38(1)(a) and Michael Gravenor Agency Ltd. was jointly charged on the count under paragraph 38(1)(b). At the end of the fiscal year, no date had been set for the preliminary inquiry.

(37) *Fine Art Posters*

This inquiry commenced in June 1982 following receipt of a complaint from a Toronto company engaged in retailing prints and fine art posters alleging that various companies were engaging in a policy of price maintenance. In August 1982 searches of five companies were

conducted. On December 13, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. Following a review of the evidence, the Attorney General concluded in November 1984 that a prosecution was not warranted.

(38) Rainwater Products

This inquiry commenced in November 1982 following receipt of a complaint from a distributor that a manufacturer of eavestroughing and downpipe attempted to influence upward the price at which he sold the products and subsequently refused to supply him because of his low pricing.

During the inquiry the records of the manufacturer were examined pursuant to section 10 of the Act. The evidence in this inquiry was referred to the Attorney General of Canada in February 1984. Following a review of the evidence, the Attorney General concluded in January 1985 that a prosecution was not warranted.

(39) Watch Parts

This inquiry resulted from information received in January 1984 from a distributor of watch repair parts. The information indicated that a watch manufacturer was attempting to influence upward the distributor's prices for repair parts contrary to paragraph 38(1)(a) of the Act.

Following analysis of the documentary and oral evidence supplied by the distributor, the matter was referred to the Attorney General of Canada on June 29, 1984. In February 1985 the Attorney General concluded that the evidence was insufficient to support a prosecution.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

No applications were made under Part IV.1 during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 31.2

(1) Fuel Injection Service Parts

This inquiry commenced in June 1982 following receipt of complaints from independent service companies in British Columbia that they were unable to obtain service parts for a specific brand of fuel injection systems from the authorized distributor of the product. Evidence gathered in the inquiry indicated that an application to the Restrictive Trade Practices Commission was warranted. However, a change in the ownership of the distributor led to a change in its distribution policy. As a result, the complainants were able to obtain satisfactory supplies.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on June 18, 1984.

SECTION 31.4

(2) Inner Tubes

The inquiry commenced in May 1981 following receipt of a complaint from a Canadian manufacturer of inner tubes. The complainant maintained that his business was substantially

affected by the practice of a major manufacturer of radial tires to provide warranty protection only if the manufacturer's brand of inner tubes was used. Despite a lengthy investigation and monitoring period, no clear evidence was found of substantial impediment to the complainant's sales as a result of the warranty policy. Interviews with senior officers of the manufacturer also revealed that the practice could likely be justified for technological reasons.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the inquiry was discontinued and reported to the Minister on August 31, 1984.

SECTION 33

(3) *Pharmaceuticals*

This inquiry commenced in April 1983 following receipt of a complaint from a manufacturer of generic drugs. The complaint alleged that Miles Laboratories Ltd. was attempting to maintain and entrench its monopoly position with respect to the cardiac drug Adalat by preventing the complainant from obtaining supplies of soft gelatin capsules essential to the production of a generic equivalent.

During the inquiry documentary evidence was obtained by way of warrants issued under section 443 of the Criminal Code, from Miles and two manufacturers of gelatin capsules. The existence of the inquiry became public when Miles made application to the Supreme Court of Ontario to quash the warrants executed at the Miles premises (see item (3) — Other Matters).

The evidence obtained in this inquiry revealed that there were factors, unrelated to the actions of Miles, that resulted in the complainant's difficulties in obtaining supplies of soft gelatin capsules. In addition, the documents revealed that other generic drug manufacturers had not been prevented from securing supplies of the capsules from these sources. The Director was also informed that the complainant had been successful in obtaining supplies of the soft gelatin capsules from a supplier in the United States.

The inquiry was accordingly discontinued and reported to the Minister on March 29, 1985.

SECTION 34

(4) *Textile Products — Québec City*

In November 1984 the Director received an application pursuant to section 7 of the Act for an inquiry into the alleged predatory pricing policies of a number of manufacturers and suppliers of draperies, hangings and curtains in the Québec City area, contrary to paragraph 34(1)(c) of the Act.

The information obtained during the inquiry did not reveal that a violation of the Act had taken place. In particular, there was no evidence to support an allegation that the prices being charged were unreasonably low.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the inquiry was discontinued and reported to the Minister on March 8, 1985.

(5) *Super Glue*

This inquiry commenced in April 1982 following receipt of a complaint alleging predatory pricing of cyanoacrylate glue (more commonly referred to as super glue) by a large supplier. Evidence was gathered by way of searches and section 17 examinations, and additional documentary evidence was obtained from the supplier on a voluntary basis.

Analysis of the evidence indicated that after losing its dominant market position to new entrants in 1980 and 1981 the supplier had undertaken an aggressive marketing program in

1982 for sales of super glue in the consumer market. Documentary and oral evidence in respect of costs indicated that, while during the initial phases of the campaign the selling price was below costs, this was due to the use of a higher priced inventory of inputs. The evidence demonstrated that the supplier undertook an intensive program of cost-cutting on the product and by late 1982 was making a profit at that selling price.

Of particular concern was the issue of transfer pricing for bulk glue, which was purchased from a Puerto Rican affiliate. However, the evidence indicated that the company had obtained competitive quotes for bulk glue from unaffiliated sources and these were matched by its Puerto Rican affiliate. As a result, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on June 20, 1984.

SECTION 38

(6) *Crystalware*

This inquiry commenced in February 1984 following receipt of a complaint from a retailer that he had been refused further supply of crystalware products because of his low pricing policy.

During the inquiry documentary evidence was obtained from the premises of the supplier pursuant to section 443 of the Criminal Code. The evidence suggested that there were legitimate reasons for the refusal to supply. As a result, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on July 12, 1984.

5. Other Matters

(1) *Business Forms*

It has come to the public's attention that there exists an inquiry into the sale and supply of business forms in the prairies region. This inquiry became public as a result of proceedings before the Saskatchewan Court of Queen's Bench concerning the application of the Charter of Rights and Freedoms to oral examinations before the Restrictive Trade Practices Commission pursuant to section 17 of the Act. On July 7, 1982, the Court issued an interim injunction to prevent any further oral examinations in Regina relating to this particular inquiry, until such time as the Court could consider the Charter matter. On December 1, 1983, the Saskatchewan Court of Queen's Bench ruled that section 17 of the Act is inconsistent with section 7 of the Charter of Rights and Freedoms and is, therefore, of no force or effect. The Court ruled, however, that section 45 of the Act is not inconsistent with the Charter. On December 12, 1983, the Crown filed an appeal with respect to the ruling on section 17. At the end of the fiscal year, no date had been set for hearing the appeal.

(2) *Flat Rolled Steel and Related Products*

It has come to the public's attention that there exists an inquiry into the production, manufacture, purchase, sale and supply of flat rolled steel, plate steel bar and structural steel and related products under section 32 of the Act. This inquiry became public as a result of proceedings before the Federal Court with respect to an application by 24 companies and individuals under section 18 of the Federal Court Act for prohibition, *certiorari* and *mandamus* against the Restrictive Trade Practices Commission, the Director and the hearing officer. This action sought to overturn certain decisions or rulings that occurred in conjunction with examinations upon oath pursuant to subsection 17(1) of the Act. The rulings of the Federal Court were appealed by both the Applicants and the Respondents to the Federal Court of Appeal, which on December 15, 1981, reversed the decision of the Trial Division. On March 15, 1982, the Supreme Court of Canada granted leave to appeal the decision of the Federal

Court of Appeal. This case was heard on October 26, 1984, and a decision is pending. These proceedings are more fully reported in the 1982 Annual Report at page 19 (*Irvine et al. v. RTPC et al.*, [1982] 1 F.C. 72.)

(3) *Pharmaceutical Products*

It has come to the public's attention that there exists an inquiry into the importation, manufacture, production, supply, sale, distribution, transportation and advertisement of pharmaceuticals and related products under section 33 of the Act. This inquiry became public as a result of proceedings in the Supreme Court of Ontario, Toronto Motions Court, with respect to an application made by Miles Laboratories Ltd. to quash a search warrant issued pursuant to section 443 of the Criminal Code. The applicant argued that pursuant to subsection 27(2) of the Interpretation Act, a statute such as the Combines Investigation Act, which contains a provision for the search and seizure of documents, is excluded from using the search warrant provision of the Criminal Code. The matter was heard on May 23, 1984, at which time the Court, in dismissing the application, found that subsection 27(2) of the Interpretation Act cannot apply to a statute whose power of search and seizure is constitutionally of no force and effect, so as to exclude the availability of section 443 of the Criminal Code. On June 26, 1984, Miles Laboratories Ltd. appealed this decision to the Ontario Court of Appeal, but on October 9, 1984, the appeal was dismissed. The company took no further action following this decision.

Subsequent to an analysis of the evidence assembled in this matter, the Director concluded that there was insufficient grounds to warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister pursuant to subsection 14(2) of the Act on March 29, 1985.

(4) *Fleet Aerospace Corporation and Fathom Oceanology Limited — Sonar Handling Equipment*

On March 11, 1985, the Director received a letter from the President of Fathom Oceanology Limited requesting that an inquiry be initiated into the proposed takeover of Fathom by Fleet Aerospace Corporation. Both companies are involved in the design and manufacture of sonar handling equipment supplied primarily to the Department of National Defence. On February 18, 1985, Fleet had distributed a letter to all shareholders of Fathom offering to take up any and all shares tendered to Fleet under a share exchange arrangement. The directors of Fathom subsequently advised the shareholders that the Fleet offer was not in their best financial interests.

From the information gathered during the preliminary investigation, the Director concluded that he had sufficient grounds to initiate an inquiry under the merger and monopoly provisions, section 33, of the Act. On March 17, 1985, search warrants obtained under section 443 of the Criminal Code were executed at the premises of Fleet in St. Catharines and Fort Erie and a number of documents were seized from both locations. At the same time, representatives of the Director examined documentation at the premises of Fathom under the voluntary authorization of the company.

On March 18, 1985, the Attorney General of Canada filed a motion with the Federal Court of Canada requesting that an interim injunction be issued preventing Fleet from acquiring the shares of Fathom tendered in response to the Fleet takeover offer. On the same day Fleet filed a motion with the Supreme Court of Ontario asking that the search warrants executed at Fleet be quashed and the seized documents be returned to the Company.

The motion filed by the Attorney General with the Federal Court was heard in Toronto on March 25 and 26, 1985. On March 27, 1985, the Court rendered its decision denying the interim injunction sought by the Attorney General.

The motion to quash the search warrants was heard in Toronto on March 26 and 27, 1985. At the conclusion of the hearing the Court reserved judgment on the application.

On April 9, 1985, the Court rendered its decision on this matter quashing the search warrants and ordering that the documents be returned to the applicant. No decision has been taken by the Director with respect to any further action contemplated in this matter.

(5) *Municipal Castings (B.C.)*

In March 1984 representatives of the Director searched the premises of a Surrey, B.C., municipal castings supplier and its affiliates pursuant to section 443 of the Criminal Code. This inquiry concerned an alleged violation of the monopoly provisions of the Act.

Prior to completion of the search, the companies petitioned the Supreme Court of British Columbia by way of *certiorari* to quash the search warrants, and an interim Order was issued by the Court placing the seized documents in the custody of the issuing Justice of the Peace. In April 1984 the Court allowed the warrants to stand except for certain portions, which it quashed or amended. This judgment was appealed by the Crown and the Petitioners.

In February 1985 the Court of Appeal of British Columbia quashed the warrants in their entirety because the lower court had amended them when it had no statutory authority to do so. Although the authority to sever portions in a search warrant lies within the jurisdiction of the superior court, the capacity to amend a search warrant lies solely within the jurisdiction of the issuing Justice of the Peace. The Petitioners immediately applied to the Court of Appeal to have their documents returned while the Crown requested that the documents remain in the custody of the Justice of the Peace until it could obtain a revised warrant to seize whatever documents were covered by it.

In March 1985 the Court of Appeal ordered that the documents be returned to the Petitioners unless the Crown obtained new warrants within a specified period, in which case it would be permitted to seize these documents. Prior to being served a new warrant the Petitioners were granted a stay of proceedings and the Court of Appeal agreed to hear their motion to vary or discharge its Order. The motion was to be heard in June 1985.

CHAPTER IV

RESOURCES BRANCH

1. Activities

The Resources Branch is responsible for the conduct of all inquiries under the Act with respect to the activities of firms in the Canadian resource industries. In this context resource industries are considered to include agriculture; fishing and all food processing; trapping and all fur processing; the forest industry including all stages of manufacture and distribution of wood and wood products, including pulp and paper; the production, mining and primary processing of all minerals; and the production and distribution of energy, including electrical power, coal and petroleum products.

The Branch analyzes complaints and evidence from various sources pertaining to allegedly anticompetitive situations in resource sectors and, when warranted, conducts an inquiry. Any apparent restriction of competition is examined in order to determine whether there is reason to believe that a violation of Part V of the Act has occurred or that grounds exist for the making of an order by the Commission under Part IV.1 of the Act.

The Branch is concerned with the assessment of the competitive implications of specific regulatory activities as they pertain to the resource industries. In this context, pursuant to section 27.1 of the Act, the Branch assists the Director with his representations before federal regulatory boards in respect of the maintenance of competition in connection with matters being heard by such boards.

The Branch is also concerned with inquiries relating to the patent and trade mark provisions of section 29 of the Act in relation to the resource industries. As well, it maintains a general surveillance of competitive activities and competition policy issues in those industries for which it is responsible so as to identify problem areas requiring analysis or investigation. Further, the Resources Branch participates in interdepartmental committees and provides input into, and analysis of, competition issues arising from acquisitions under review by the Foreign Investment Review Agency.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) Hogs — Alberta

This inquiry commenced in February 1980 following receipt of information alleging that the major meat packers operating in Alberta had agreed to share slaughter hogs offered for sale by the Alberta Pork Producers Marketing Board on a predetermined percentage basis; to purchase slaughter hogs at an agreed price or within a given price range; and agreed on prices for pork or pork products to be sold to the distributive market.

Documents on the premises of the Alberta Pork Producers Marketing Board were examined pursuant to section 10 of the Act in February 1980. Hearings before the Restrictive Trade Practices Commission were held during 1980 and 1981 in Calgary, Edmonton, Ottawa and Toronto.

The evidence obtained in the inquiry was referred to the Attorney General of Canada on December 21, 1981. On February 19, 1982, an Information containing two counts under paragraph 32(1)(c) of the Act was laid at Calgary against Burns Foods Limited, Canada Packers Inc., Intercontinental Packers Limited, Red Deer Packers Ltd., and Swift Canadian Co. Ltd.

A revised Information adding Gainers Limited, changing the name of another accused and deleting a third, was laid on June 24, 1982, against Burns Food Limited, Canada Packers Inc. (formerly Canada Packers Ltd.), Eschem Canada Inc. (formerly Swift Canadian Co. Ltd.), Gainers Limited and Intercontinental Packers Limited.

The preliminary inquiry commenced on January 31, 1983. On December 9, 1983, in the Provincial Court of Alberta at Calgary, three of the accused — Burns, Eschem and Gainers — waived the preliminary inquiry and pleaded guilty to a conspiracy to prevent or lessen unduly competition in the purchase of slaughter hogs in the Province of Alberta for the period from December 9, 1969, to December 31, 1974. The three accused companies were each fined \$125 000.

The two remaining accused, Canada Packers and Intercontinental, continued with the preliminary inquiry. The presiding judge gave his ruling on May 24, 1984. The judge ordered the two accused to stand trial in respect of a conspiracy to prevent or lessen competition unduly in relation to prices of pork and pork products sold to the distributive market, contrary to paragraph 32(1)(c) of the Act, for the period January 1, 1965, to June 30, 1976, instead of January 1, 1965, to December 31, 1978, originally alleged by the Crown. In addition, he ruled that the evidence was not sufficient to allow a charge relating to the marketing of slaughter hogs.

The Crown, as a result of the ruling not to include the marketing of slaughter hogs in an indictment, decided to proceed by way of preferred indictment. The Attorney General of Canada, on July 18, 1984, laid charges in the Court of Queen's Bench of Alberta alleging that Canada Packers Inc. and Intercontinental Packers Limited conspired to prevent or lessen unduly competition in the marketing of slaughter hogs and pork cuts or products therefrom, contrary to paragraph 32(1)(c) of the Act.

The trial is scheduled to commence on January 6, 1986, in Calgary.

(2) Gasoline Service Stations — Rouyn-Noranda

This inquiry commenced in April 1982 following receipt of two complaints from Rouyn-Noranda alleging that most of the gasoline retailers operating in the area had held a meeting during which it was decided to increase retail prices. It was alleged that this agreement was implemented the following day.

Hearings were held in September 1982 and January 1983. The evidence obtained was referred to the Attorney General of Canada in April 1983. On June 16, 1983, Informations containing one count under paragraph 32(1)(c) were laid at Rouyn against 14 gasoline retailers, one oil company agent and four oil company representatives (charges against two representatives were later withdrawn). On April 26, 1984, and May 15, 1984, an Order of Prohibition under subsection 30(2) was obtained against Paul-Emile Poirier, René Thibault, Fernand Mantha, Maks Leban, Ghislain Blanchette, Hugues Bureau, Henri-Paul Fournier, Germain Allaire, Maurice Bérubé, Raymond Rheault, Cécile Banville, La Compagnie Pétroles J.M. & B. Dupont Inc., Léo Gervais, André Provencher (all gasoline retailers), Jean-Paul Labrie (oil company agent), and Jean Dubuc (oil company representative). A preliminary hearing with respect to the one remaining oil company representative had not yet taken place at the end of the fiscal year.

(3) B.C. Tree Fruit

This inquiry was initiated in April 1981 following receipt of an application from six Canadian residents pursuant to section 7 of the Act requesting that the marketing activities of the B.C. tree fruit industry be investigated. The applicants alleged that the organizations operating under the one-desk marketing system, to protect their dominant market position, had engaged in conduct contravening section 32 of the Act.

In May and June 1981, documents were examined on the premises of the British Columbia Tree Fruit Marketing Board, the British Columbia Fruit Growers' Association and

its subsidiary companies, B.C. Tree Fruit Limited and Sun-Rype Products Limited, as well as on the premises of 14 packing houses pursuant to section 10 of the Act. The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 1, 1983.

On August 31, 1983, an Information containing three counts under paragraphs 32(1)(a) and (c) of the Act was laid at Kelowna against the British Columbia Fruit Growers' Association, Charles Bernhardt, Richard Bullock, John Bullock, Nigel Taylor, Arnold Pedersen, William Dell, Westbank Orchards Limited, Creston Co-operative Packers, the Vernon Fruit Union, Lake Area Co-operative Growers Association, Naramata Co-operative Growers Exchange, Monashee Co-operative Growers Association and Kelowna Growers Co-operative. On February 13, 1984, a revised Information deleting two counts relating to the sale and supply of tree fruit was laid against the same parties. The preliminary inquiry commenced on February 13, 1984, and was completed on February 22, 1984. The presiding judge reserved his decision in this matter to March 12, 1984, on which date he ordered all the accused to stand trial. The trial was scheduled to commence on April 29, 1985.

SECTION 38

(4) *Imperial Oil Limited — Gasoline*

This inquiry commenced in November 1981 following receipt of a complaint from an independent reseller of petroleum in Waverley, Ontario, alleging that he had been refused supply of gasoline by Imperial Oil Limited because of his low pricing policy. During the inquiry the records of Imperial Oil Limited were examined pursuant to section 10 of the Act.

On February 11, 1982, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On February 25, 1982, an Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) of the Act was laid at Toronto against Imperial Oil Limited. The preliminary hearing was held at Toronto on August 19 and 20, 1982, and the company was subsequently ordered to stand trial on the count under paragraph 38(1)(b). The trial was held from March 26 to March 28, 1984, and on April 4, 1984, Imperial Oil was convicted. On April 24, 1984, the company was fined \$75 000. Imperial Oil filed a notice of appeal but in November 1984 the appeal was abandoned.

(5) *Dairy Equipment — Winnipeg*

This inquiry commenced in October 1982 following receipt of a complaint from an independent operator of a refrigeration equipment repair shop in Winnipeg, Manitoba, alleging that Dairy Supplies, Limited, the exclusive distributor of machines and parts manufactured by Taylor Freezer, discriminated in the sale and supply of parts required to service the Taylor line of equipment, contrary to paragraph 38(1)(b) of the Act.

Documents on the premises of Dairy Supplies, Limited were seized on January 20, 1983. Hearings before the Restrictive Trade Practices Commission were held on January 9 and 10, 1984 in Winnipeg.

On December 3, 1984, the evidence obtained in the inquiry was referred to the Attorney General of Canada. On February 13, 1985, an Information containing one count under paragraph 38(1)(b) of the Act was laid at Winnipeg against Dairy Supplies, Limited. The date for a preliminary inquiry was to be set on April 15, 1985.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

There were no applications under this Part during the year.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

There were no discontinued inquiries during the year.

5. Director's Representations to Regulatory Boards

(1) National Energy Board Hearings — Review of Toll Design and Methodology of TransCanada Pipelines Limited

Hearings before the National Energy Board concerning the regulation by the Board of the transmission of natural gas by TransCanada Pipelines Limited commenced on October 30, 1984. The Director filed a notice of intervention on June 4, 1984. The Director's concern in intervening is that regulations and toll design governing TransCanada Pipelines Limited restrict access to transportation service by industrial users who wish to ship gas that they acquire in Western Canada. Transportation of that gas is unavailable where it is used in a market currently serviced by TransCanada's gas supply.

The hearings adjourned in November to permit additional evidence to be filed. Following a conference of all the parties on February 12, 1985, the Board announced that it was terminating the current proceedings until the public issues affecting the marketing and pricing of natural gas have been clarified by the federal government. The methodology hearing will be resumed with the issuance of a new hearing order consistent with that new energy policy. The Director intends to continue his intervention on the question of access should it remain at issue.

(2) Anti-dumping Tribunal — Refined Sugar

In April 1984 the Department of National Revenue, following receipt of a complaint from the Canadian Sugar Institute, made a preliminary determination that U.S. refined sugar had been dumped in Canada between April and December 1983. Upon receipt of the Notice of Preliminary Determination, the Anti-dumping Tribunal initiated an inquiry pursuant to section 16 of the Anti-dumping Act to ascertain whether the dumping of refined sugar, originating in or exported from the United States of America, has caused, is causing, or is likely to cause material injury to production of like goods in Canada. The Anti-dumping Tribunal scheduled hearings into this matter for June 1984.

The Director submitted that the injury caused was *de minimus* and not material. In support of his argument he compared the volume of dumped refined sugar and the volume of domestic production of like goods; the volume of dumped goods and the volume of apparent domestic consumption of like goods; the relative import and export trade flows of refined sugar and like goods; and the relative levels and sizes of domestic and foreign refinery margins. He also submitted that it is of particular importance to preserve such competition as was offered by the limited quantities of "dumped" imports given the oligopolistic structure of the domestic refined sugar industry, which historically has not been exposed to competition from foreign sources.

On July 23, 1984, the Anti-dumping Tribunal ruled that dumping into Canada of refined sugar from the United States of America has not caused, is not causing and is not likely to cause material injury to the production in Canada of like goods. In August 1984 the Canadian Sugar Institute filed an application in the Federal Court of Appeal, pursuant to the provisions of section 28 of the Federal Court Act, to review and set aside the decision of the Anti-dumping Tribunal made on July 23, 1984. At the end of the fiscal year, no date had been set for hearing the application.

6. Activities Related to Agricultural Policy

During the year representatives of the Director took an active part in interdepartmental discussions on proposed changes to the National Farm Products Marketing Agencies Act; import control regulations under the Fruit, Vegetables and Honey Act; the Agricultural Stabilization Act; dairy import controls; and wheat export pricing policy. In addition members of the Director's staff were involved in interdepartmental deliberations related to the pricing and registration of pesticides; import controls on beef and veal; the drafting of Plant Breeders' Rights legislation; and review of the chicken supplementary import guidelines.

7. Other Matters

(1) Petroleum Industry — Section 47

This inquiry was referred to in previous Annual Reports.

Since the hearings commenced in December 1981, more than 200 witnesses have appeared before the Restrictive Trade Practices Commission. On February 22, 1984, the Director filed Final Argument. The Final Arguments of the oil companies were filed between March 20 and March 31, 1984. The Restrictive Trade Practices Commission then reconvened the hearings for April 24, 1984, to receive oral clarifications on the written Arguments and to hear the Director's remedy proposals. Final written submissions from the oil companies and the Director with respect to remedies were received by the Commission in August 1984. The Commission's report is expected in the upcoming fiscal year.

(2) Dairy Policy

In May 1984 the Director met with the Consultative Committee to the Canadian Dairy Commission on the subject of changes in the structure and performance of the dairy industry. This action arose out of concern regarding the increasing levels of concentration in the dairy processing sector. In his discussion, the Director stated that the increased concentration levels could be traced to such factors as technological developments permitting greater efficiency in production and distribution; the tendency towards multi-product plants to increase profitability (economies of scope); and changes in the wholesale demand pattern, which is related to the fact that large chain stores account for most of the food sales at retail. In other words, technological and market forces have shown that advantages are conferred upon larger enterprises. In addition, the Director noted that the high levels of concentration at the processing level have not led to excess prices and profits in the dairy industry.

CHAPTER V

SERVICES BRANCH

1. Activities

The main function of the Services Branch is to analyze complaints and other evidence from a broad variety of sources with respect to alleged restrictions of competition in the service and distribution industries and to conduct inquiries into those situations where inquiry is warranted. The Services Branch is responsible for all wholesale and retail distribution activities not otherwise assigned to the Manufacturing or Resources Branch, and for all other services traditionally regarded as such. These include finance, insurance and business, professional and personal services of all kinds, but do not include the distributing sectors of vertically integrated industries, in which the major activity of the industry falls within the responsibilities of the Manufacturing or Resources Branch. In addition, the Services Branch is not responsible for construction, communications, or distribution of forestry or energy products research, or for representations to federal boards, commissions or other tribunals pursuant to section 27.1 of the Act that fall within the responsibilities of the Regulated Sector Branch.

The Branch deals with those violations of Part V of the Act that are not in the nature of misleading advertising or deceptive marketing practices, and with situations that may be reviewable under Part IV.1. It is also concerned with inquiries relating to proceedings under the patent and trade marks provisions of section 29 of the Act, and maintains a general surveillance of competitive issues and activities in Canada in those industries for which it has responsibility. In addition, it participates in interdepartmental committees and provides input with respect to competition policy in relation to proposed mergers under review by the Foreign Investment Review Agency.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) *Fort Erie Auto Body Shops*

This inquiry commenced in January 1981 following receipt of a complaint describing an agreement by 11 area body shops to fix their shop charge-out rates. During the inquiry the records of the body shops were examined.

On May 30, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information containing one count under paragraph 32(1)(c) was laid at Ottawa on May 17, 1984, against the following companies and individuals:

Dave Spear Limited
Climenhaga's Garage Ltd.
Don Dean Chevrolet Oldsmobile Limited
Erie Collision Limited
Ted Lloyd Pontiac-Buick Ltd.
Jon Beck carrying on business as Dufferin Motors
William Fickel carrying on business as Fickel's Body Shop
Sergio Rubesa carrying on business as Garrison Auto Body
Gerald Doan carrying on business as Jerry's Auto Body
Norman Page carrying on business as Page Auto Body
Orin Page carrying on business as Speedy Auto Body

The preliminary inquiry commenced on January 21, 1985, and was adjourned to June 10, 1985.

(2) *Building Supplies — Swift Current*

This inquiry commenced in June 1981 following publication of a newspaper advertisement indicating that all area lumber dealers had agreed to fix the price for delivery of supplies. During the inquiry the records of the dealers were examined.

On January 11, 1983, the evidence in the inquiry was referred to the Attorney General of Canada. An Information under subsection 30(2) was laid at Swift Current on September 6, 1984, against Beaver Lumber Company Limited, Revelstoke Companies Ltd., Mr. Plywood Enterprises Ltd., Swift Current Building Supplies (1970) Ltd., Pioneer Co-operative Association Limited, and Windsor Plywood (The Plywood People) Ltd.

At the end of the fiscal year a date for appearance had not been set.

(3) *Outdoor Advertising*

This case arose out of an inquiry by the Director into the manufacturing, producing, transporting, acquiring, supplying, storing and otherwise dealing in outdoor printed posters, outdoor poster panels and related products.

The evidence obtained in the inquiry was referred to the Attorney General of Canada in July 1980 and an Information containing counts under section 33 and paragraph 32(1)(c) of the Act was laid at Toronto on April 2, 1981. The details of this case were set out at pages 58 and 59 of the 1984 Annual Report.

On February 8, 1985, with the consent of the accused, a new indictment was preferred against Mediacom Inc., Seaboard Advertising Co. Ltd. and HOAL Investments Ltd. containing one count under paragraph 32(1)(c) of the Act covering the period January 1, 1973, to June 30, 1976.

On February 11, 1985, the three companies pleaded guilty and the following fines were imposed:

Mediacom Inc. — \$400 000
Seaboard Advertising Co. Ltd. — \$200 000
HOAL Investments Ltd. — \$100 000

It is noteworthy that the fine imposed on Mediacom Inc. is the largest fine ever imposed under the Act on a single count.

An Order of Prohibition was also granted. The Order prohibits the companies from engaging in various forms of anticompetitive behaviour and requires the companies to terminate the free production program involving the sale of outdoor printed posters and outdoor poster panels space, and eliminate the exclusive sales agreements between the companies acting as sales representatives for regional and national sales of outdoor poster panels and outdoor poster plant operators. A copy of the Order appears in Appendix IX.

SECTIONS 32 AND 38

(4) *Metropolitan Toronto Pharmacists Association*

This inquiry commenced in May 1979 upon receipt of information that the Metropolitan Toronto Pharmacists Association had agreed to implement a boycott of the third-party drug-prepayment plan administered by Green Shield Prepaid Services Inc., a major nonprofit insurer. The insurer had revised the ingredient cost paid to pharmacists for drugs to reflect the volume discounts now common in the industry, which has moved from independent pharmacists purchasing in limited quantities to buying groups and chains of outlets purchasing in bulk. As a result of the alleged boycott and other harassment techniques, the insurer was compelled to reinstate its prior schedule of fees. Information obtained in the investigation, including documentary evidence obtained under section 10 of the Act, was referred to the Attorney General of Canada on August 15, 1980.

An Information was laid on June 10, 1981, against seven individuals and the Association alleging offences under paragraph 32(1)(c) and paragraph 38(1)(a) of the Act between March 1979 and January 1980. Subsequently, the charge under paragraph 38(1)(a) and all charges against the individuals were withdrawn. Thus, the Metropolitan Toronto Pharmacists Association was charged that it unlawfully conspired with members of the Executive of the Association and others to prevent or lessen, unduly, competition in the sale or supply of prescription drugs and pharmacists' services within Metropolitan Toronto to subscribers of Green Shield Prepaid Services Inc., contrary to paragraph 32(1)(c).

At the conclusion of the preliminary inquiry on June 25, 1982, the Association was ordered to stand trial. The trial commenced in Toronto on May 2, 1983, in the Supreme Court of Ontario. During the proceedings, the defence submitted that subsections 10(1) and 10(3) of the Combines Investigation Act were inconsistent with section 8 of the Canadian Charter of Rights and Freedoms, which guarantees that everyone has the right to be secure against unreasonable search and seizure, and were therefore of no force and effect. A further motion by the defence submitted that subsection 45(2) of the Act was invalid by reason of paragraph 11(d) of the Charter and that the documents proved to have been seized from the possession of an officer of the accused Association were, therefore, not admissible into evidence. The Court subsequently dismissed both motions.

The trial continued until May 20, 1983, at which time the Court reserved judgment. On November 20, 1984, the Court rendered its decision acquitting the Association. On December 24, 1984, the Crown filed a notice of appeal. However, at the end of the fiscal year no date had been set for hearing the appeal.

SECTION 34

(5) *Neptune Meters, Limited — Meters and Meter Parts*

This inquiry was initiated following receipt of a complaint from a meter sales and service firm alleging that Neptune Meters, Limited engaged in a pricing policy that discriminated against the firm. The evidence obtained in the inquiry was referred to the Attorney General of Canada on March 31, 1981. On December 23, 1981, an Information containing one count under paragraph 34(1)(a) of the Act was laid at Edmonton against Neptune Meters, Limited. In June 1982 the prosecution of this case was transferred to Toronto. The Information was relaid on October 5, 1982, and subsequently the preliminary inquiry commenced on May 24, 1983, in Toronto. On June 23, 1983, the accused was ordered to stand trial but subsequently filed a motion to quash the committal. The motion was heard on November 15, 1983, but on February 28, 1984, was dismissed. The accused appealed the dismissal of its motion, but on November 20, 1984, the appeal was denied. An application by the accused for leave to appeal to the Supreme Court of Canada was heard on February 18, 1985, but on March 1, 1985, the application was dismissed. At the end of the fiscal year a trial date had not been set.

SECTION 38

(6) *Rolph-McNally Limited — Maps and Cartographical Material*

This inquiry commenced on January 11, 1979, following receipt of a complaint alleging that Rolph-McNally Limited had refused to supply a retailer because of the latter's low pricing policy. On November 17, 1980, the evidence in this inquiry was submitted to the Attorney General of Canada. On March 31, 1981, an Information containing one count under paragraph 38(1)(a) and one count under paragraph 38(1)(b) of the Act was laid at Toronto. A preliminary inquiry was held on December 9, 1981, and Rolph-McNally Limited was ordered to stand trial on both counts. Immediately prior to the trial, Crown counsel came into possession of new evidence in this matter on the basis of which a stay of proceedings was entered on October 31, 1983. On October 31, 1984, the stay was allowed to expire.

(7) *Lois Canada Inc. — Clothing*

This inquiry into the sale and supply of jeans and related products was commenced by the Director in 1979. The evidence obtained in the inquiry pursuant to sections 10 and 17 of the Act was referred to the Attorney General of Canada on March 10, 1981.

On March 1, 1982, an Information containing four counts under section 38 was laid at Montréal against Lois Canada Inc. At the preliminary inquiry on June 16, 1982, the accused was ordered to stand trial. The trial commenced on November 22, 1982, and continued to November 24, 1982, at which point there was no more available court time. The trial resumed on January 16, 1984, and counsel for the defence and the Crown filed final argument in April and July 1984, respectively. At the end of the fiscal year the decision had not been rendered.

(8) *Audio-Visual Trade Shows and Products*

This inquiry commenced in July 1981 as a result of information received that a stereo equipment distributor was refused participation in the Canadian Audio-Video Trade Show organized by Hunter Nichols Publishing Limited and Sound Spectacular Inc. because of the distributor's low pricing policy.

Evidence obtained in the inquiry was referred to the Attorney General of Canada on September 10, 1982. An Information was laid at Toronto on December 29, 1982, against Hunter Nichols Publishing Limited and Sound Spectacular Inc., both of Toronto, alleging contravention of paragraph 38(1)(a) of the Act during the period March 1, 1981, to July 31, 1981. The preliminary inquiry commenced in Toronto on October 26, 1983, and the accused was discharged. A preferred indictment was sought but was denied on April 30, 1984.

(9) *Wenger Ltd. — Watches*

This inquiry commenced in the spring of 1981 following receipt of a complaint from a retailer of watches and jewellery in Chicoutimi, Québec, alleging that Wenger Ltd. of Montréal had refused to supply a product to him because of his low pricing policy.

Searches were conducted in December of the same year in Montréal and Québec City pursuant to section 10 of the Act. Hearings under section 17 were conducted in November 1983.

The evidence obtained in the inquiry was referred to the Attorney General of Canada in November 1984. On February 27, 1985, an Information containing one count under paragraph 38(1)(b) of the Act was laid at Chicoutimi against Wenger Ltd.

At the end of the fiscal year no date had been set for the preliminary inquiry.

(10) *Women's Clothing — Calgary*

This inquiry commenced in October 1980 following receipt of a complaint from a women's clothing retailer that certain other women's clothing retailers had pressured women's clothing suppliers not to supply the complainant's outlet because it sold its merchandise at discount prices.

The evidence obtained pursuant to sections 10 and 17 of the Act was referred to the Attorney General of Canada on November 10, 1983. Following a review of the evidence, the Department of Justice concluded that a prosecution was not warranted.

SECTION 41

(11) *Scrap Metal — Montréal*

In December 1982 an inquiry was commenced respecting alleged offences under sections 32 and 32.2 and paragraph 34(1)(c) of the Act in the ferrous and nonferrous scrap metal industry. Following the exercise of section 10 authority in Montréal, proceedings were instituted under subsection 41(1) against Preussag Metal Inc. and two employees. The trial commenced on December 2, 1983, and was scheduled to resume on April 26, 1984.

On April 26, 1984, a stay of proceedings was entered to allow the court time to consider a motion by the defendants to dismiss the Information on the grounds that the judgment by the Alberta Court of Appeal in the Southam case rendered illegal the section 10 search of Preussag Metal Inc. On July 30, 1984, the court issued a judgment agreeing with the Alberta Appeal Court and dismissing the Information. As a result of the Supreme Court of Canada's decision in the Southam case, which upheld the appellate court decision, the Crown did not appeal the dismissal of the charge.

3. Applications by the Director to the Restrictive Trade Practices Commission under Part IV.1

(1) Motion Pictures

The early events of this inquiry are covered in greater detail at page 51 of the 1983 Annual Report. On December 22, 1982, the Director applied to the Restrictive Trade Practices Commission for an Order under section 31.2 against the following seven major motion picture distributors in Canada: Astral Films Limited; Columbia Picture Industries, Inc.; Paramount Productions Inc.; Universal Films (Canada); Warner Bros. Distributing (Canada) Limited; United Artists Corporation; and Twentieth Century-Fox Film Corporation.

On June 3, 1983, the Director informed the Commission that through negotiations the distributors, excepting Astral Films Limited, had provided undertakings contingent upon the Commission's adjourning the hearings for 12 months. On June 7, 1983, the Commission granted the adjournment, and the undertakings became effective on July 1, 1983. The undertakings provide for a film-by-film, theatre-by-theatre system of distribution whereby the distributors afford eligible exhibitors the opportunity to submit offers for their motion pictures and license the exhibitor that, in their business judgment, submitted the best offer. The undertakings given to the Director were contained in a letter, which was set out at pages 64 to 66 of the 1984 Annual Report.

The Director undertook an extensive notification and consultation program with exhibitors and exhibitors' associations, so that they could take advantage of the undertakings and report any noncompliance by the distributors. Throughout the summer and fall of 1983 the distributors' compliance with the undertakings was monitored, and the information obtained formed the basis of an interim report by the Director to the Commission on March 15, 1984.

The Director filed a final report with the Commission in July 1984. That report noted improvements in access to first- and second-run motion pictures by independent exhibitors, but also identified a number of continuing concerns held by the exhibitors. In light of the improvements, and a number of other factors, including the purchase by Cineplex of Canadian Odeon Theatres in June 1984, the Director withdrew his application to the Commission under section 31.2 of the Act. The Director advised the distributors, however, that he considered the undertakings to continue in full force and effect and that he would not hesitate to take any appropriate action if he received evidence that exhibitors were not being given fair opportunities to compete for motion pictures.

4. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

SECTION 31.4

(1) Maintenance Contracts for Word Processing Systems — British Columbia

This inquiry commenced in March 1982 following receipt of an application under section 7 of the Act from six residents of British Columbia. The applicants alleged that a supplier of

word processing systems was engaged in a practice of tied selling pursuant to which grounds existed for the making of an Order by the Restrictive Trade Practices Commission under section 31.4 of the Act. The company was alleged to have made a practice of informing customers who had purchased one of its word processing systems that all diskettes and other accessories for the system had to be purchased from the company or the customer's service contracts and equipment warranties would be jeopardized.

After a lengthy investigation it was concluded that while the company's marketing staff had attempted to use the alleged practice as a technique to induce customers to purchase diskettes and other supplies from the company, there was no evidence that the company's service department ever made it a practice to enforce the alleged tie or that the conduct was continuing. It had never been a policy of the company's service department to refuse a call in relation to equipment covered by a maintenance contract either to service or to assist in the recovery of lost documents that were caused by other diskettes. In fact, it was the policy of the service department to respond to all such calls as quickly as it would to any other service call under such contracts. Although customers may have been required to pay an additional service charge, calculated on a time and materials basis, if data loss was caused by a diskette not supplied by the company, it could not be established that the company was engaged in a practice of tied selling.

In addition, the competitor on whose behalf the application was made was able to compensate for the loss of sales and had diversified into the manufacture of other products and was less interested in re-establishing its former position in the sale of diskettes. Although the company against whom the allegations were made held a monopoly in the servicing of its equipment in the relevant market, it also faced direct competition from several other manufacturers in the sale of word processing systems. As these other manufacturers apparently did not engage in the alleged practice, prospective users appeared to have access to several competing alternatives in the market. In addition, since March 1982 the company had significantly reduced the price of its diskettes to levels that were competitive with those offered for sale by other firms in the market. This indicated the existence of competition in the market to which the company had apparently responded.

On the basis of these considerations, the inquiry was discontinued and reported to the Minister on July 9, 1984, and the applicants were informed of the decision.

SECTIONS 31.2 AND 31.4

(2) *Newspapers and Magazines — Québec*

This inquiry commenced in February 1983 following receipt of complaints indicating that a distributor of newspapers and magazines had refused to supply the products to retailers and had adopted a policy of tied selling contrary to section 31.4 of the Act. In May 1983 the Director received a formal application under section 7 of the Act that also related to the tied selling policy adopted by the same distributor identified in the earlier complaints.

The information obtained during the inquiry established that the volume of business lost because of the refusal to supply was not sufficient to substantially affect the complainants in their business within the meaning of paragraph 31.2(1)(a). In addition, the refusal to supply had been motivated by the refusal of the complainants to meet the usual trade terms of the supplier with respect to payment of the service charges. After the complainants agreed to pay the service charges, the supplier recommenced supply.

With respect to the section 31.4 complaint, it was established that competition in the field of newspaper and magazine distribution was not and would not likely be lessened substantially. Further, it was not possible to establish the existence of a practice of tied selling. Finally in March 1984 the complainants indicated that the supplier was no longer requiring that they accept the whole range of his newspapers and magazines.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. The matter was therefore discontinued and reported to the Minister on April 10, 1984, and the applicants were informed of the decision.

SECTION 32

(3) *Real Estate Brokerage — Québec*

This inquiry commenced in May 1984 following receipt of an application under section 7 of the Act. The applicants stated that some notaries had created a real estate brokerage firm and were selling to all interested notaries a franchise giving a right to access a computerized information bank containing information on all properties on sale registered in that bank.

The franchise agreement required that the commission charged should not exceed five per cent of the value of the transaction and section 91 of the notaries' fee schedule requires a minimum rate of two per cent of the value of the transaction. Since the general rate charged by traditional brokers varies between six and seven per cent, the complainants saw the two-to-five per cent rate as a conspiracy to lessen competition unduly.

An examination of the facts did not indicate that the five per cent rate was unreasonably low since the cost to a notary in private practice of providing the service would be minimal and no evidence of an agreement between the notaries involved was uncovered. On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on October 5, 1984, and the applicants were informed of the decision.

SECTIONS 32 AND 34

(4) *Urban Transit — Province of Québec*

This inquiry commenced in September 1982 following receipt of a formal application under section 7 of the Act. The applicants alleged that the three transit commissions in a region had conspired to introduce a system of regional transit passes for the purpose of restraining unduly competition in the field of urban transit in the region. It was also alleged that the tariffs imposed by one of the urban transit commissions were unreasonably low.

The information obtained in the inquiry established that the specific transit commissions could, by reason of their enabling legislation, establish tariffs for users of their vehicles and that the opportunity exists to challenge their decision by intervening before the Commission des Transports du Québec. Given that public transit in Québec is subject to provincial regulatory jurisdiction, the Director concluded that he did not have grounds to continue the inquiry. The inquiry was therefore discontinued and reported to the Minister on February 27, 1984, and the applicants were informed of the decision.

SECTION 32

(5) *Dubbing of Motion Pictures and Television Series*

This inquiry commenced in December 1979 following receipt of a complaint alleging that a group of persons had formed an association to collect copyright fees attached to the translation of material for dubbing or subtitling of motion pictures or television series from another language into French.

The complainants alleged that the association had been assigned the copyright in respect of the translation of all motion pictures and television series dubbed or subtitled in French and that it intended to collect the fees associated therewith on behalf of its members.

A thorough examination of the evidence obtained in the inquiry as a result of a search of the premises of the association pursuant to section 10 of the Act established that the members of the association did not control a large part of the market for dubbing and subtitles. Further, the management of the association, after being made aware that its activities raised questions under the Act, abandoned any attempt to collect copyright fees from broadcasters.

The Director therefore decided to discontinue the matter and reported his decision to the Minister on April 10, 1984.

SECTIONS 32, 32.2 AND 34

(6) *Scrap Metal — Montréal*

This inquiry commenced in December 1982 following receipt of a complaint from a scrap metal dealer. The complainant alleged that a competing scrap metal dealer, which had recently been acquired by a large trans-national company, was using predatory buying tactics with the intent of driving his company out of business. Subsequently, further allegations were made indicating conspiracy and bid-rigging behaviour by the new entrant.

During the inquiry documentary evidence was obtained pursuant to section 10 of the Act. The evidence obtained established that while higher than normal prices were paid to certain accounts, normal or market value prices were paid to most accounts with the result that the average price paid was not unusually high and the prices at which the material was then sold could not be considered unreasonably low. Furthermore, the questionable buying behaviour was discontinued one day prior to the commencement of searches and shortly thereafter the company discontinued entirely its ferrous scrap metal business. No information was found to corroborate the conspiracy and bid-rigging allegations.

On the basis of the foregoing, the Director concluded that the matter did not warrant further inquiry. Accordingly, the matter was discontinued and reported to the Minister on January 20, 1985.

5. Other Matters

(1) *Notarial Services — Québec*

This matter was reported at pages 68-69 of the 1984 Annual Report. The existence of this inquiry into the supply of notarial services in Québec was brought to public attention following an application by the Chambre des Notaires du Québec in the Federal Court — Trial Division in 1982.

The inquiry was continuing at the end of the fiscal year.

(2) *Newspapers — Edmonton, Alberta*

This matter was described in detail at page 55 of the 1983 Annual Report. Following the exercise of section 10 authority at the *Edmonton Journal* in April 1982 concerning an inquiry under section 33 and paragraph 34(1)(c) of the Act relating to the production, distribution and supply of newspapers in Edmonton, application was made for an injunction to prohibit further searching.

The matter was argued before the Alberta Court of Queen's Bench in April 1982, and subsequently before the Alberta Court of Appeal. In January 1983 the latter court ruled section 10 of the Combines Investigation Act to be contrary to the provisions of section 8 of the Charter. Leave to appeal to the Supreme Court of Canada was granted, and arguments were made on November 22 and 23, 1983.

On September 17, 1984, the Supreme Court of Canada upheld the ruling of the Alberta Court of Appeal declaring that section 10 of the Act was inconsistent with section 8 of the Charter and therefore of no force or effect. (See Chapter II for details of decision.)

(3) *Thomson Newspapers*

During an ongoing inquiry the Director made application to a member of the Restrictive Trade Practices Commission in July 1983, under subsection 10(3) of the Act, to authorize his representatives to conduct an examination of the records located on various premises of Thomson Newspapers Limited. In executing this authority, the company obtained an order from the Federal Court — Trial Division, prohibiting the Director and his representatives from con-

tinuing their searches, on the grounds that section 10 of the Act was contrary to section 8 of the Charter of Rights and Freedoms.

The Crown had been granted leave to appeal the decision by the Federal Court, but following the Supreme Court of Canada's decision in the Southam case, the appeal was abandoned.

(4) Inquiry in Progress — National Hockey League

In May 1983, the Board of Governors of the National Hockey League (NHL) rejected an application for the sale and transfer of the St. Louis Blues franchise to Saskatoon, Saskatchewan. After a preliminary investigation, the Director concluded that the circumstances provided grounds for an inquiry under section 33 of the Act and, in June 1983, applied to the Restrictive Trade Practices Commission for orders pursuant to section 17 of the Act requiring the attendance of certain officers and Governors of the NHL to give evidence.

The existence of the inquiry became public as a result of challenges to the orders by the NHL in the courts. On August 9, 1983, the Federal Court of Canada dismissed a motion by the NHL to quash the orders, after the NHL had argued that section 17 of the Act was contrary to the Charter of Rights and Freedoms. An appeal of that decision was dismissed by the Federal Court of Appeal in November 1983 and, in March 1984, the Supreme Court of Canada denied an application for leave to appeal.

The orders issued under section 17 of the Act to certain governors and officials of the NHL required that they provide financial statements for each team's operations. On June 5, 1984, after hearing submissions from both parties, the Commission amended the orders so that individual financial statements were not required. The Director appealed that decision to the Federal Court of Appeal and on March 22, 1985, the court set aside the Commission's decision and upheld the original requirement to produce the financial statements.

(5) Buying Groups

In June 1982 the Director received an application under section 7 of the Act concerning the establishment of a buying group by two major food retailers. The concerns of the applicants were extensively reported in the press. At the end of the fiscal year this inquiry was continuing.

(6) Regional Taxicab Licensing — Lower Mainland of British Columbia

On March 20, 1984, the Motor Carrier Commission of British Columbia issued a notice announcing that a public hearing would be held to consider the manner in which taxicabs are licensed in the Lower Mainland of British Columbia.

British Columbia requires any taxicab that delivers a passenger to a municipality outside the municipality in which the passenger was picked up to have a MCC licence. One of the issues under review was the advantages and disadvantages of licensing taxicabs in this area on a regional basis.

In his submission, the Director favoured the adoption of a regional licensing system, the general easing of the entry restrictions in the industry and the adoption of uniform rules and regulations designed to have the least restrictive impact on competition. The Director felt that several significant benefits were possible from the adoption of these recommendations, including a more efficient distribution and utilization of taxis in the Lower Mainland, the development of more efficient dispatch systems and the introduction of new aggressive firms into markets that have become isolated due to entry restrictions.

On July 14, 1984, the Motor Carrier Commission issued its report on Taxi Cab Licensing in the Lower Mainland of British Columbia. One of the four actions the Commission proposed to take was the modification of the interpretation of the word "originating" so as to enable taxicabs, under certain specific conditions, to pick up passengers in areas that heretofore they have been unable to serve legally.

On a related matter, the Director addressed a letter on March 27, 1985, to the Motor Carrier Commission of British Columbia in response to a notice of public forum concerning the manner in which ground transportation services are authorized to serve passengers using Vancouver International Airport. The Director suggested that although a regulatory framework may be necessary for the efficient operation of these services, he urged the Commission to adopt a framework that places the least restrictions on the competitive forces in the market. In this regard, he drew the Commission's attention to the Seattle-Tacoma Port Authority's attempts to deregulate the taxi industry at the Seattle-Tacoma airport and the subsequent re-introduction of regulation that is as effective, but not as restrictive on competition, as the original legislation.

(7) Wholesale Travel Agencies — Western Canada

This inquiry commenced in August 1984 following the joint announcement that three major Western Canadian inclusive tour operators — CP Air Holidays, Pacific Western Holidays Ltd. and Silver Wing Holidays Ltd. — had agreed to establish a uniform schedule of commission rates to be paid to retail travel agents for the sale of their products from western Canada to continental United States destinations.

An order pursuant to subsection 17(1) of the Act was issued by a member of the Restrictive Trade Practices Commission requiring representatives from seven tour companies to appear in February 1985 for oral examination. Shortly before the hearings were scheduled to commence, a request was made on behalf of CP Air Holidays to adjourn the hearings *sine die* pending the outcome of CP Air Holidays' application to the Supreme Court of British Columbia for a declaration that the oral examination procedure established in subsection 17(1) of the Act infringes section 7 of the Charter of Rights and Freedoms. The application was scheduled to be heard in May 1985.

(8) Merger Register

This register has been maintained by the Director since 1960. It attempts to record all reported mergers in industries subject to the Combines Investigation Act.

Accordingly, until the 1976 amendments, firms in most of the service sectors of the economy were largely excluded. Information available under the Corporation and Labour Unions Returns Act (Calura) indicates that a large number of very small acquisitions are not reported in the press. Calura information itself is not used in the preparation of the register because many companies report late, many acquisitions of extremely small companies are reported without any indication as to size, many acquisitions are of nonoperating companies, and it is often impossible to tell whether there has been a real change in control.

The merger register depends upon comprehensive coverage of the major financial news media, including daily and financial newspapers, trade journals, business magazines and other publications of Canada, the United States and Britain. To the extent that the intensity of press reports of merger activity does not vary significantly from year to year, to the extent that it is accurately reported and to the extent that the canvass of press reports by the Bureau is consistent from year to year, the number of acquisitions recorded in the merger register provides an indication of merger trends.

Since the Foreign Investment Review Act came into force in April 1974, the information respecting "foreign" acquisitions in the merger register now includes acquisitions that have been allowed under the Foreign Investment Review Act. Information respecting applications for acquisition of Canadian business enterprises by foreign persons ("non-eligible persons" in terms of FIRA) is brought to the attention of the Director for the purpose of obtaining advice with respect to the competition policy implications of proposed acquisitions. However, the information provided to the Director by the Foreign Investment Review Agency would not of itself be used to initiate an inquiry or in any subsequent proceedings under the Combines Investigation Act.

Although the register does reflect a fairly comprehensive coverage of published sources of information, attempts to verify its accuracy have shown that there is need of more adequate continuing sources of information about mergers. At this time, therefore, the merger register should not be regarded as more than an initial review of public information.

The following table shows the total number of acquisitions recorded yearly since 1960.

Year	Foreign*	Domestic**	Total
1960	93	110	203
1961	86	152	238
1962	79	106	185
1963	41	88	129
1964	80	124	204
1965	78	157	235
1966	80	123	203
1967	85	143	228
1968	163	239	402
1969	168	336	504
1970	162	265	427
1971	143	245	388
1972	127	302	429
1973	100	252	352
1974	78	218	296
1975	109	155	264
1976	124	189	313
1977	192	203	395
1978	271	178	449
1979	307	204	511
1980	234	180	414
1981	200	291	491
1982	371	205	576
1983	395	233	628
1984***	410	231	641

* Acquisitions involving a foreign-owned or foreign-controlled acquiring company (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

** Acquisitions involving an acquiring company not known to be foreign-owned or foreign-controlled (the nationality of the controlling interest in the acquired company prior to the merger could have been foreign or Canadian)

*** Preliminary

CHAPTER VI

REGULATED SECTOR BRANCH

1. Activities

The Regulated Sector Branch is primarily concerned with the behaviour and performance of regulated industries in the telecommunications, broadcasting and transport areas. It also prepares studies on such matters as the effects of tariffs and quotas on competition in Canada.

While the Regulated Sector Branch is relatively new, the Director of Investigation and Research has had the authority to intervene before federal regulatory boards since the 1976 amendments to the Combines Investigation Act. The Director has, from time to time, also intervened before provincial regulatory boards with the permission of such boards or at their invitation. In addition to interventions under section 27.1 of the Act, the Branch enforces sections of the Act which may be applicable to the unregulated activities of regulated industries.

Section 27.1 reads as follows:

27.1(1) The Director, at the request of any federal board, commission or other tribunal or upon his own initiative, may, and upon direction from the Minister shall, make representations to and call evidence before any such board, commission or other tribunal in respect of the maintenance of competition, whenever such representations or evidence are or is relevant to a matter before the board, commission or other tribunal, and to the factors that the board, commission or other tribunal is entitled to take into consideration in determining such matter.

(2) For the purposes of this section, "federal board, commission or other tribunal" means any board, commission, tribunal or person who is expressly charged by or pursuant to an enactment of Parliament with the responsibility of making decisions or recommendations related directly or indirectly to the production, supply, acquisition or distribution of a product and includes an ad hoc commission of inquiry charged with any such responsibility but does not include a court.

Since 1976, the Director of Investigation and Research has made representations before a number of regulatory bodies, among them, the Canadian Radio-television and Telecommunications Commission, the Canadian Transport Commission, the Board of Commissioners of Public Utilities for the Province of Nova Scotia, the Board of Commissioners of Public Utilities of the Province of New Brunswick, the Public Utilities Board of Alberta and the Ontario Securities Commission.

These interventions have dealt with a broad range of issues including systems and terminal interconnection in the telecommunications industry, entry in the transport industries, the effect on competition of acquisitions and joint ventures in telecommunications and transport and the introduction of more competition in both broadcasting and the securities industry.

The Director liaises with other groups during the preparation of an intervention to ensure that his representations are complementary and not redundant.

2. Proceedings Following Direct Reference to the Attorney General of Canada Pursuant to Subsection 15(1) of the Act

SECTION 32

(1) "For-hire" Trucking — Western Canada

As noted in earlier Annual Reports, the evidence gathered in this inquiry was referred to the Attorney General of Canada, and, on November 5, 1979, an Information was laid under section 32 of the Act against 20 trucking companies and 11 individuals for allegedly conspiring to lessen competition in the western trucking market for less-than-truckload services.

The 1983 Annual Report and Chapter II of the Annual Report for 1982 described a court challenge to the competence of the Attorney General of Canada to initiate a prosecution and exercise all the powers and functions conferred by the Criminal Code on the attorney general of a province. This matter was resolved on October 13, 1983, when the Supreme Court of Canada ruled in favour of the Attorney General of Canada.

The case was proceeding to preliminary inquiry when, on March 27, 1984, in Alberta Provincial Court, counsel for the defence raised objections to the case proceeding on grounds of loss of jurisdiction by the Provincial Court and an undue delay in contravention of the Canadian Charter of Rights and Freedoms.

Both motions were heard by the Provincial Court and Justice Rennie ruled in favour of the prosecution on both motions in May 1984. On the loss of jurisdiction, Justice Rennie admitted that the Court had retained jurisdiction over the charge but had lost it over the accused. However, he ruled that this could easily be remedied by a re-summons of the accused. This was immediately done. Counsel for the defence appealed the above decisions to the Court of Queen's Bench and in July 1984 Madam Justice McFadyen ruled in favour of the accused on jurisdiction but upheld the Provincial Court's decision on the Charter argument. The pre-charge delay was ruled irrelevant while the post-charge delay was not considered significant enough to warrant Crown abuse of process.

Defence counsel appealed the Charter decision while the Crown appealed the jurisdiction decision. Both motions were heard before the Alberta Court of Appeal on October 4, 1984. A decision was pending as of March 31, 1985.

3. Director's Representations to Regulatory Boards

Telecommunications

(1) Bell Canada, Connection of Customer-provided Terminal Devices

On November 13, 1979, Bell Canada applied to the Canadian Radio-television and Telecommunications Commission (CRTC) for an order approving an amendment to rule 9 of the General Regulations of Bell Canada. This rule is one of the conditions that govern the connection of telecommunication equipment to the Bell Canada network. The details of this application, as well as Bell's proposals for interim requirements governing the attachment of customer-owned equipment, and the interim and final decisions appear in the 1982 and 1983 Annual Reports at pages 64 and 61, respectively. Further details are contained in the 1984 Annual Report at page 74.

In Telecom Decision CRTC 82-14 of November 23, 1982, the CRTC ruled that it would not be appropriate to deregulate the terminal equipment business of carriers conducted on an in-house basis. Accordingly, the CRTC imposed a number of requirements on the carriers pertaining to the pricing of new and in-place terminal equipment. On December 20, 1982, CNCP Telecommunications filed Notice of Application for Leave to Appeal to the Federal Court of Appeal on the basis that the CRTC erred in holding that it had authority to regulate the prices at which CNCP sells such equipment. As an intervenor in the terminal attachment proceedings leading to Telecom Decision CRTC 82-14, the Director is a respondent in this court action. In a legal factum filed in February 1985, the Director argued that the CRTC did properly exercise its jurisdiction and that Telecom Decision CRTC 82-14 should be upheld. This matter is scheduled to go to trial on June 4, 1985.

(2) New Brunswick Telephone Company Limited Application for Network Extension Telephone Service

On December 22, 1978, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New

Brunswick for approval of proposed rates and charges for a new service to be offered by the applicant known as Network Extension Telephone Service, i.e., radio paging service. The details of the hearings in this matter are set out at pages 64 and 65 of the 1983 Annual Report.

As reported at that time, Capital Communications and Multi-Services Ltd. of Fredericton, New Brunswick, submitted a complaint to the Board of Commissioners of Public Utilities of the Province of New Brunswick. The complaint requested that the Board set tariffs for telephone answering radio paging and mobile radio services interconnected to the network of N.B. Tel.

Subsequently, the Board convened a general issue hearing to consider the potential impact of systems and terminal interconnection on telephone service in the province. Capital Communications and Multi-Services once again raised the issue of outpulsing service and rates in the context of this hearing. The Director is also an intervenor in the general issue proceeding, as reported in item (11).

As of March 31, 1985, the Board had not yet rendered a decision either on the complaint or on the general issue proceeding.

(3) Bell Canada, Northern Telecom Price Comparison

The price comparison tests are designed to ensure that Northern Telecom Limited (NTL) is fulfilling its part of the supply contract with Bell Canada whereby NTL undertakes to sell to Bell at prices no higher than it sells to other Canadian customers. Bell Canada has been regularly filing price comparisons for many years with the CRTC and, previously, with the Canadian Transport Commission.

As a result of Telecom Decision CRTC 80-14, dated August 12, 1980, the CRTC issued Telecom Public Notice 81-18 on March 6, 1981. In that Notice, the CRTC indicated that it intended to review the price comparison principles enunciated in Telecom Decision CRTC 78-7. The CRTC invited submissions from interested parties to be filed by September 1, 1981.

The Director filed a detailed and comprehensive submission described more fully at pages 66 and 67 of the 1983 Annual Report. In brief, the Director submitted that the price comparison studies are a poor alternative for procurement of goods and services on a competitive bidding basis.

In Telecom Decision CRTC 84-23, issued October 5, 1984, the CRTC concluded that a competitive bidding process was not necessary in order to protect Bell Canada's subscribers. However, the CRTC was of the view that it did not have sufficient information to determine what type of purchasing practice is appropriate in the long term. Once the CRTC has the opportunity to give full consideration to all available information, it intends to review the issue of the appropriate purchasing practice for both Bell Canada and B.C. Tel.

In its decision the CRTC concluded that NTL should not be unduly constrained by domestic regulation in its participation in foreign markets. It was the CRTC's view that successful participation in such markets contributes to NTL's ability to provide advanced and diverse products to Bell Canada at reasonable price levels, which is ultimately in the interest of Bell Canada subscribers. Hence, the CRTC's pricing principles previously set forth in Telecom Decision CRTC 78-7 were amended to read:

The prices paid by Bell Canada for any and all products and services purchased from NTL and its subsidiaries should, in all cases, be as low as or lower than the prices paid by any other customer in Canada, for comparable products and services under substantially similar circumstances and conditions with respect to volume and level of trade considerations at a particular time.

To ensure that the prices Bell Canada pays are in accordance with these pricing principles, the CRTC has required the filing of an annual audit, using the methodology of the supply contract between Bell and NTL. Bell Canada was directed to have an independent accounting firm report to the CRTC annually within 90 days of the end of each fiscal year.

In response to an application by Bell Canada to vary Telecom Decision CRTC 84-23, the CRTC in Telecom Decision CRTC 85-3 of February 13, 1985, approved a change in the reporting period, making it 180 days from the end of each fiscal year.

(4) CRTC Telecom Cost Inquiry — Phase III — Costing of Existing Services

On December 15, 1981, the CRTC issued Telecom Public Notice 1981-41 announcing its intention to hold a public hearing as part of the third phase of the Telecommunications Cost Inquiry (Cost Inquiry).

The Cost Inquiry was initiated by the Canadian Transport Commission in January 1972 and continued by the CRTC in April 1976, when it assumed jurisdiction over federally regulated telecommunications carriers. The proceedings are described in detail at pages 72 and 73 of the 1983 Annual Report.

In that report, it was indicated that the Director had filed written formal and reply arguments on this subject with the CRTC and was awaiting the decision of the Inquiry Officer who chaired the public hearings on the matter.

On April 30, 1984, the Inquiry Officer released his report. The principal recommendations of the report were consistent with the positions taken by the Director in his Final Argument of November 22, 1982. The Inquiry Officer concluded that the costing methodology to be developed for existing services should use only a few broad service categories and, to the fullest extent possible, rely upon the carrier's actual costs as recorded in its accounts. The report emphasized auditability as the principal criterion for evaluating possible costing methodologies and rejected the computer-simulation-based methodologies proposed by some carriers on the ground that they were, for all practical purposes, not possible to audit.

The Director and other parties submitted written comments on the Inquiry Officer's report on June 14, 1984. The Director's comments emphasized that the CRTC should in some instances go beyond the principal recommendations of the report to specify, in its decision, criteria for cost assignment that further reduce carrier discretion to design costing systems that conform to their corporate objectives. These comments also emphasized the Director's long-standing position that costing systems can, at best, provide only reasonable approximations of the costs of broad service categories, and are insufficient alone to prevent the cross-subsidization of competitive services by monopoly service revenues. Complementary regulatory policies, including eliminating carrier prohibitions on resale and sharing and requiring certain activities to be carried on through an organization that is fully separate from the regulated utility, are therefore endorsed.

The Director submitted his reply to the comments of Bell Canada and B.C. Tel on July 6, 1984. Final oral argument was presented in September 1984.

As of March 31, 1985, a decision from the CRTC was pending.

(5) Newfoundland Telephone Company Limited — Mobile Radio and Paging Services

On April 27, 1982, Newfoundland Telephone Company Limited (Nfld Tel) filed an application with the Board of Commissioners of Public Utilities for approval of a new service to be called Dial Access to Radio Paging Service. The hearing convened on June 3, 1982, at which time Nfld Tel objected to the intervention of the Director on the grounds that the Director did not have the statutory power to appear and that his appearance was not relevant to the hearing. The Board subsequently dismissed the objection and in a written order dated June 11, 1982, permitted the Director to appear and be heard on the application.

Further details in this matter and additional background information are set out at pages 74 and 75 of the 1983 Annual Report. As reported at that time, Nfld Tel had petitioned the Supreme Court of Newfoundland, Court of Appeal, for leave to appeal the decision of the Board to grant the Director standing to appear before it in relation to this matter. The appeal was heard on December 5, 1983. Nfld Tel argued that the Board's decision to grant the Director standing was an error in law given the absence of a specific authority granted to the Direc-

tor by the Combines Investigation Act to appear before provincial regulatory boards. Subsection 27.1(1) of the Act specifically authorizes the Director to appear before federal regulatory boards.

On April 18, 1984, the Newfoundland Court of Appeal allowed an appeal by Nfld Tel from a decision of the Board of Commissioners of Public Utilities that permitted the Director to intervene in a matter before the Board. On June 26, 1984, the Director made an application for leave to appeal this judgment to the Supreme Court of Canada.

On October 1, 1984, the Supreme Court of Canada granted leave to appeal from the decision of the Newfoundland Court of Appeal regarding the Director's capacity to appear before provincial tribunals. The Court commenced proceedings by stating that it was pre-disposed to grant such leave since there were two conflicting decisions, the New Brunswick Court of Appeal having ruled in the Director's favour in relation to capacity (see item (8)) and the Newfoundland Court of Appeal having found against the Director.

It is anticipated that these matters will be heard together in the fall of 1985.

(6) *Bell Canada Corporate Reorganization*

On June 23, 1982, Bell Canada announced a plan to reorganize the Bell Canada group of companies. An essential element of the reorganization would be a court-authorized "arrangement" as provided for by the Canada Business Corporations Act, whereby all of Bell Canada's outstanding share capital would be transformed into share capital of Bell Canada Enterprises Inc. (BCE), a former subsidiary of Bell Canada. Through an exchange of shares, all of Bell Canada's equity investments, except those in Tele-Direct (Publications) Inc., Bell-Northern Research, and Telesat Canada, would then be transferred to BCE. These transferred investments consist primarily of Bell Canada's controlling interest in Northern Telecom, a number of provincial telephone companies, Bell Canada International Management Research and Consulting Ltd. (BCI), Bell Communications Systems Inc. (BCS, a supplier of customer premises telecommunications equipment), and a number of printing and publishing companies. Thus, BCE would become the new holding company for the Bell group, and Bell Canada would become a wholly-owned subsidiary of BCE. BCE would also become the focus for strategic planning within the Bell group.

Further details in this matter are referred to at pages 78 to 80 of the 1983 Annual Report. At that time, it was reported that the report of the CRTC in this matter was pending.

The CRTC published its report on April 18, 1983. It identified specific areas in which the proposed reorganization of the Bell group of companies could affect Bell's telephone subscribers and recommended legislative action to remedy these potential problems. The CRTC concluded that if the recommended legislative amendments were enacted, there would not be any negative impact on subscribers arising from the reorganization. The CRTC also expressed the view that there were potential benefits related to the reorganization. Further details concerning the Report are referred to at pages 78 and 79 of the 1984 Annual Report.

Subsequent to the publication of the CRTC's report, the Minister of Communications announced that the Government had accepted the CRTC's recommendations and would act quickly to introduce the necessary legislation. Accordingly, the Attorney General dropped his appeal concerning the interpretation of Bell Canada's Special Act. The nature of the Attorney General's appeal and the events leading up to it were discussed fully at page 79 of the 1983 Annual Report. Bell completed the necessary steps in its corporate reorganization in the spring of 1983.

On February 6, 1984, the Bell Canada Reorganization Act received First Reading in the House of Commons as Part I of Bill C-20. This Bill subsequently died on the Order Paper with the dissolution of Parliament. Two new related Bills, Bill C-19 and Bill C-20, were given First Reading on December 20, 1984.

Bill C-19 is an Act respecting the reorganization of Bell Canada. This Bill implements the major recommendations of the CRTC's report on Bell Canada's 1983 corporate reorgani-

zation. The legislation contains an important provision, strongly favoured by the Director, that will allow the CRTC to require Bell Canada to engage in competitive telecommunications activities by way of separate affiliates, where such a business organization would be an effective means of achieving the CRTC's regulatory objectives. This would reduce the opportunity for Bell Canada to subsidize competitive telecommunications activities with revenues from its monopoly operations. Bill C-20 is an Act to amend the Canadian Radio-television and Telecommunications Commission Act, the Broadcasting Act and the Radio Act. This Bill would allow the Cabinet to issue binding policy directives to the CRTC in telecommunications matters. It would also allow the government to remove CRTC regulation from specified competitive telecommunications services for which the need for regulation is not apparent.

Representatives of the Director participated along with representatives of the CRTC, and of the Departments of Communications and Justice, in the preparation of Bill C-19.

Bill C-20 received Second Reading on January 31, 1985. As of March 31, 1985, Bill C-19 was awaiting Second Reading.

(7) *Radio Common Carrier Interconnection with Federally Regulated Telephone Companies*

This matter was referred to in detail at pages 79 and 80 of the 1984 Annual Report.

On March 22, 1984, the CRTC released Telecom Decision CRTC 1984-10. The CRTC concluded that the interconnection of cellular and conventional public and private mobile radio systems to the public switched telephone network was in the public interest. Contrary to the arguments of the telephone companies, the CRTC concluded that interconnection would not lead to a significant erosion of their long-distance service revenues in the foreseeable future. On this basis, the CRTC has directed all federally regulated telephone companies to enter into negotiations with conventional public and private mobile radio operators and with Cantel, the company licensed by the Department of Communications to compete nationally with the cellular services offered by the telephone companies, in order to facilitate interconnection.

All federally regulated telephone companies were required to file written reports with the CRTC on or before July 23, 1984, indicating the status of their negotiations. Tariffs applying to the interconnection of radio common carriers were to be filed by the telephone companies on or before September 17, 1984.

In July 1984 Bell Canada, B.C. Tel and Cantel filed reports with the CRTC on the status of their negotiations to develop the terms and conditions for the interconnection of their cellular systems to the public switched telephone network. Two major issues were unresolvable: (i) the costs of interconnection, and (ii) the assignment of, and payment for, telephone numbers.

On October 25, 1984, the CRTC issued Telecom Public Notice 1984-55, which requested public comment on these two points of difference. On the same date, the CRTC in Telecom Public Notices 1984-56 and 1984-58 requested comment on tariffs filed by B.C. Tel and Bell for the interconnection of conventional public mobile radio systems to the public switched telephone network.

The Director commented on these issues in a letter of intervention filed with the CRTC on November 23, 1984. The Director raised the concern that cellular and conventional radio competitors to the telephone companies should not bear, through interconnection charges, an unreasonable portion of the costs of interconnection. The Director filed a further submission on December 3, 1984, in reply to certain comments of interested parties.

On December 19, 1984, the CRTC released Telecom Decision CRTC 84-29 in this matter. Concerning costs of interconnection, the CRTC agreed with the Director and concluded that it would not be in the public interest for the general body of Bell or B.C. Tel subscribers to assume the costs associated with achieving such interconnection. Concerning the second issue of assignment and payment for telephone numbers, the CRTC found Bell's position to be reasonable and consistent with previous CRTC decisions.

The CRTC also approved, on an interim basis, the tariff revisions filed by Bell Canada providing for the introduction of Cellular Access Service. Further comment after the CRTC releases its interrogatories will be called for at a later date. In addition, the CRTC has directed Bell to enter into negotiations with Bell Cellular and Cantel to develop cost-based rates for an entire NXX code. Bell is to file proposed rates on or before April 1, 1985, at which time parties will be asked to comment.

(8) New Brunswick Telephone Company Limited Application for an Interpretation of Certain Provisions of Its General Tariff

On November 3, 1982, the New Brunswick Telephone Company, Limited (N.B. Tel) made an application to the Board of Commissioners of Public Utilities of the Province of New Brunswick for an interpretation of Items 1230.2 and 1600.3 of its General Tariff respecting Network Extension Telephone Service (i.e., radio paging) and Call Completion Services (i.e., telephone answering service). Specifically, N.B. Tel requested Board approval of an interpretation that would permit the company to eliminate hook-up charges for those customers transferring to Network Extension Telephone Service or Call Completion Service from the services offered by radio common carriers whose assets the company had acquired. This matter was described in detail at page 81 of the 1983 Annual Report.

At that time the Director was considering the advisability of an appeal against the ruling of the Board that the Director did not have capacity as a person to intervene before it, a decision based upon the ruling of Justice Pace of the Supreme Court of Nova Scotia, Appeal Division, discussed at pages 63 and 64 of the 1983 Annual Report.

On June 1, 1983, the Director made an application to the New Brunswick Court of Queen's Bench for a judicial review of the ruling of the Board. The matter was heard before Justice Hoyt of the Court's Trial Division on August 24, 1983.

On November 16, 1983, Justice Hoyt rendered a judgment dismissing the application of the Director. In his reasons, Justice Hoyt expressed doubt that subsection 27.1(1) of the Combines Investigation Act, which specifically authorizes the Director to appear before federal regulatory boards, precluded the Director from intervening before other regulatory boards. However, his doubts on this issue were not sufficient to cause him to disagree with the 1981 judgment of Justice Pace.

Justice Hoyt's decision was subsequently appealed by the Director to the New Brunswick Court of Appeal on December 12, 1983. The appeal was heard on March 15, 1984. On April 6, 1984, the Court of Appeal of New Brunswick in allowing the appeal concluded that the Board and the Trial Judge in the Court of Queen's Bench were in error in concluding that the Director did not have the power or capacity to appear or be represented before the Board. In a separate proceeding, N.B. Tel made an application for Statement of Claim filed in the Federal Court of Appeal concerning a subsequent decision of the Board to allow the Director to appear in a general issue hearing on Systems and Terminal Interconnection (see item (11)). A stay of proceedings has been agreed to by both parties pending a decision from the Supreme Court of Canada.

On June 18, 1984, N.B. Tel also filed application for leave to appeal from the April 6, 1984, judgment. On October 1, 1984, the Supreme Court of Canada granted leave to appeal from the decision of the Court of Appeal of New Brunswick regarding the Director's capacity to appear before provincial tribunals. The Court commenced proceedings by stating that it was pre-disposed to grant such leave since there were two conflicting decisions, the New Brunswick Court having ruled in the Director's favour and the Newfoundland Court having found against the Director (see item (5)).

It is anticipated these matters will be heard together in the fall of 1985.

(9) *Services Using the Vertical Blanking Interval or Subsidiary Communication Multiplex Operation*

In response to CRTC Public Notice 1983-77, the Director submitted comments to the CRTC on July 29, 1983, respecting the appropriate regulatory treatment of services to be offered in the future on a commercial basis by broadcasting undertakings using the vertical blanking interval (VBI) and Subsidiary Communications Multiplex Operation (SCMO).

The VBI is an integral part of every television signal broadcasted but is not required to transmit the video image itself. Recent technological developments permit the use of the VBI for the provision of a variety of special services. Similarly, SCMO may be used to provide a number of services over the unused portion of the FM radio broadcast spectrum.

Both VBI and SCMO can be used for the distribution of alpha-numeric services, including electronic newspapers, games and stock market information. In addition, SCMO has the capacity to provide voice and music services. The market for these services is highly competitive, involving telecommunications carriers, paging firms, the print media and, potentially, cable operators. In view of the healthy competitive environment in which such services are offered and the fact that the provision of such services would be ancillary to the broadcaster's main undertaking, the Director proposed that any regulation of the market for these services should be kept to a minimum. Specifically, the Director recommended that the CRTC should seek only to ensure that the transmission of VBI and SCMO services do not interfere with other broadcast signals and that a portion of the available VBI and SCMO transmission capacity should be reserved for desirable noncommercial uses, such as closed captioning for the hearing impaired. In the Director's view there is no need for the CRTC to license providers of such services to control the nature of the VBI and SCMO services offered in the market or the means by which service providers derive revenues from their operations.

In Public Notice 1984-117 dated May 17, 1984, the CRTC announced its intention to take a two-phased approach to regulating the use of VBI and SCMO facilities.

Phase I is in keeping with the Director's recommendations. The CRTC will not require broadcasters to obtain a licence for the use of the VBI and SCMO. In addition, no limitations will be imposed on broadcasters respecting the types of services they may offer. The CRTC encouraged broadcasters to provide access to the VBI and SCMO to third parties and indicated that revenues may be derived by broadcasters from their subscription fees or advertising. Furthermore, cable companies are ordered to carry VBI and SCMO services unless the carriage of these services causes undue technical interference to the programming on the main portion of the channel.

Separate financial records must be kept for each VBI and SCMO service as a check against cross-subsidization of these non-programming services by the broadcasters' main programming activities. In addition, licensees authorized to provide VBI and SCMO services must file reports on their experience and progress in meeting the Commission's objectives by December 31, 1986.

Phase II of the Commission's plan will simply involve reviewing the experience with the Phase I decision to determine whether there is any need for changes in it. A date for Phase II has yet to be announced.

(10) *Alberta Government Telephones — 1983 Rate Application*

On February 1, 1983, Alberta Government Telephones (AGT) applied to the Alberta Public Utilities Board for a general rate increase. The Board conducted hearings on the matter during August and October 1983.

A full report on this matter was provided at pages 87 and 88 of the 1984 Annual Report. At that time it was reported that the decision of the Alberta Public Utilities Board was pending in relation to this issue.

The Board issued Decision No. E84083 on June 15, 1984. The Board found in favour of the Director respecting the improper inclusion of certain monopoly services in the non-basic category and has ordered those services to be transferred to basic, and to remove the revenue and expense effect of these services from the contribution test.

The Board found in favour of AGT concerning the non-basic category the company assigned to the yellow pages directories. The Board maintains that the directory competes with other forms of advertising media. The decision did not address the Director's argument that the directory appears to comprise the entire contribution to basic.

The Board accepted AGT's submission that the non-basic services did not cover their full share of interest charges and are thus subsidized by the basic service. However, no reasons were given by the Board. The Board did not respond to the Director's recommendation that an issues hearing be convened to examine the contribution test methodology.

(11) *Interconnection in the Telecommunications Industry in New Brunswick*

On September 12, 1983, the Board of Commissioners of Public Utilities of the Province of New Brunswick issued a notice announcing that a public hearing would be held to consider issues relating to interconnection in the telecommunications industry in New Brunswick. The Director filed a Notice of Intention to participate with the Board on October 24, 1983.

A prehearing conference was held in Saint John, New Brunswick, on November 21, 1983, at which time counsel for N.B. Tel objected to the appearance of the Director as an interested party in the hearing on the basis of a previous ruling made by the Board in March 1983. At that time, as discussed in detail at pages 81 and 82 of the 1983 Annual Report, the Board ruled that the Director did not have capacity as a person to intervene before it. Despite the argument raised by N.B. Tel, the Board ruled that the Director could bring evidence before it in the present proceeding that would assist it in its deliberations and allowed the Director to participate in the hearing as an interested party.

A further notice was issued by the Board on January 20, 1984, inviting comments from interested parties on the following subjects:

- (a) the attachment of customer-owned single-line terminal equipment to the public switched network;
- (b) the attachment of customer-owned multiline terminal equipment to the public switched network;
- (c) the interconnection to the public switched network of communication systems owned by customers or other carriers;
- (d) the substitution of competing message toll services for N.B. Tel's Message Toll Services accomplished by the interconnection to the public switched network of other public transmission facilities or by the sharing and reselling of interconnected transmission facilities leased from the telephone company or another carrier; and
- (e) the bypassing of the telephone company's local exchange plant by privately owned or other public transmission and switched facilities.

Participants in the hearing were invited to address the following issues with respect to the five levels of interconnection identified above:

- (a) the impact of competition on N.B. Tel's revenues, the quality of service, consumer choice, the price of telecommunication products and services, technological progress and employment;
- (b) the impact of competition on universal access to the telephone service and on the obligation for N.B. Tel to provide telephone service on demand throughout New Brunswick;
- (c) the impact of competition on the N.B. Tel process for planning and provisioning the telephone network; and
- (d) the changes competition may cause to the regulatory process, and the possible legislative changes needed to preserve the traditional goals in the provisioning of telephone service.

The Director filed a written submission with the Board on March 5, 1984, along with the evidence of two expert witnesses, W.H. Melody of Simon Fraser University and Charles M.

Dalfen of Ottawa, who appeared on the Director's behalf during public hearings held in May and August 1984. These submissions argue that competition in the provision of telecommunication products and services will provide users with an enhanced choice of equipment and services, lower prices and increased efficiency and flexibility. They also address the various regulatory tools available to the regulator to prevent cross-subsidization of competitive services by monopoly services, as well as complementary mechanisms that could be implemented to speed up the development of fair competition in the market. The Director submitted that reliance on accounting methodologies and reporting procedures cannot provide adequate protection against cross-subsidization and would greatly increase the regulatory burden. In the Director's view, the Board should require that all of N.B. Tel's competitive services be offered through a separate subsidiary in order to minimize the potential for cross-subsidization and the Boards' regulatory involvement in monitoring N.B. Tel's competitive activities.

As of March 31, 1985, a decision of the Board was still pending.

(12) *Attachment of Customer-owned Terminal Equipment to the Public Switched Network in Nova Scotia*

On July 18, 1983, Maritime Telegraph and Telephone Company Limited (Maritime Tel) applied to the Board of Commissioners of Public Utilities for the Province of Nova Scotia for approval of certain modifications to its general tariff to allow for the connection to its telephone network of customer-provided terminal equipment and of conditions and rates related to the rental by Maritime Tel of terminal apparatus.

On October 6, 1983, the Board issued a notice announcing that a hearing would be held to deal with the matter starting on November 28, 1983. On November 7, 1983, the Director notified the Board of his intention to appear at the hearing and filed evidence prepared by his expert witness, Charles M. Dalfen of Ottawa. Mr. Dalfen also delivered testimony on behalf of the Director during the public hearing on the issue, which commenced on January 30, 1984.

During the hearing, the Board examined the potential advantages and disadvantages of allowing the introduction of competition in the provision of terminal equipment (customer-owned residential telephones and business switchboards) in Nova Scotia and related matters. Evidence was also introduced on the different means available to the Board to ensure that competition in terminal equipment would proceed on sound grounds and that cross-subsidization of Maritime Tel's competitive services with revenues from its regulated monopoly activities would not occur.

In this regard the Director argued that the Board could most effectively avoid undesirable cross-subsidization by insisting that Maritime Tel offer competitive services through a separate subsidiary. The Director argued that accounting safeguards and ongoing regulatory supervision could not alone offer adequate protection against cross-subsidization and would greatly tax the resources of the Board.

On March 31, 1984, the proceedings were adjourned until April 12, 1984. The Board of Commissioners of Public Utilities for the Province of Nova Scotia released its decision in this matter on November 28, 1984, concluding that terminal attachment will be permitted for all multiline systems and extensions on single line services and that there will be unbundled rates. Provision of competitive terminal service by Maritime Tel will eventually be deregulated and will be carried on through a separate division of the company. The decision also specifies that Maritime Tel will be required to work with the Board to develop appropriate changes to its accounting systems to allow for proper tracking by the Board.

On February 14, 1985, Maritime Tel applied to the Board for approval of its plans to sell and lease new multiline terminal equipment on a partially deregulated basis for an interim period pending the establishment of a separate division. In its application Maritime Tel stated that such a division would not be established until late 1985.

The Director intervened in this matter and participated by way of cross-examination at a three-day public hearing convened by the Board on March 11, 1985, to consider Maritime

Tel's application. Final written argument was filed by the Director on March 22, 1985. In his final argument the Director questioned the urgency of Maritime Tel's entry into the direct sale terminal market prior to the establishment of a separate terminal division. In the Director's view the form of regulation proposed by Maritime Tel for the interim period is not adequate to safeguard anti-competitive behaviour on the part of Maritime Tel. The Director has urged the Board to either deny Maritime Tel's application or to impose stricter regulatory safeguards, similar to those implemented by the CRTC in Telecom Decision CRTC 82-14, on Maritime Tel's sales activities pending the establishment of the separate division.

As of March 31, 1985, a decision by the Board was pending.

(13) *Enhanced Services*

This matter arose from an application to the CRTC by Bell Canada in December 1980 for approval of a voice message service. The service permits subscribers to place a message in Bell's voice transmission network and have it delivered at a specified time or, in the event of no answer, to have it repeated until delivered.

The Director commented to the CRTC that this application constituted an expansion of Bell Canada's activities into the new area of computer-based services, commonly known as enhanced services, and as such raised a number of competition policy issues. Among these was the possibility that Bell might not be willing to grant potential competitors in the enhanced services market equal access to its public switched telephone network. In May 1981 the CRTC released Telecom Decision CRTC 81-10, which approved the Bell service and ordered the company to provide equal access to any potential competitor also wishing to offer a voice message service. In addition, the CRTC announced its intention to provide an opportunity for public consideration of the issues involved in the establishment of appropriate general guidelines governing the provision of all other potential variants of enhanced services. A number of other enhanced services have been proposed by Bell since 1981 for which the CRTC has also given interim approval, or has approved as trials.

In November 1983 the CRTC issued Telecom Public Notice 1983-72 calling for public comments to guide the CRTC in deciding on the appropriate regulatory treatment of enhanced services in general. On February 6, 1984, the Director submitted comments recommending that the CRTC adopt the definition of basic and enhanced services developed by the Federal Communications Commission in the United States. The recommended definition incorporates the view that basic telephone service constitutes no more than a pipeline in which voice and data messages are transmitted without manipulation or enhancement by the common carrier. In this view, any service which goes beyond the simple transmission of messages would constitute an enhanced service. The Director further argued that enhanced services provided by noncarriers should be offered in a competitive market, while those of common carriers should be regulated. Pending further deliberations by the CRTC on the common carriers' costing methodology and on the desirability of requiring the carriers to separate their monopoly and competitive services structurally, the Director also recommended that the CRTC implement a number of safeguards against potential carrier abuses of their monopoly in the provision of basic services. These basic services form an integral part of the enhanced services provided by many noncarriers. In addition, the Director favoured a complete liberalization of the current restrictions on resale and sharing applicable to the provision of enhanced services.

On March 6, 1984, reply comments of a minor nature were filed by the Director in response to submissions by the carriers.

On July 12, 1984, the CRTC released Telecom Decision CRTC 84-18. In its decision the CRTC adopted a modified version of the U.S. Federal Communications Commission's definition supported by the Director. In keeping with the position of the Director, the CRTC also concluded that, in order for competition to develop in the enhanced services market, the resale of carrier services by enhanced service providers is required and will be permitted where it is clear that the service in question has, as its primary function, the provision of a basic service.

In addition, the CRTC ordered that the Phase II decision of the Cost Inquiry be modified to incorporate the requirement that carriers be deemed to have acquired underlying basic services at tariffed rates. Further, carriers are instructed to unbundle the access and transmission components of those basic services required by enhanced service providers and to inform the CRTC of steps implemented to prevent the improper use of billing records and other proprietary information. Enhanced service providers have also been required to unbundle charges for terminal equipment from other components of an enhanced service.

As part of its decision the CRTC directed all federally regulated common carriers, currently offering or planning to offer enhanced services to submit a proposal to replace individual rate evaluation studies with an aggregate study for all enhanced services to be filed on an annual basis. In Telecom Public Notice 1985-8 dated January 25, 1985, the CRTC requested comments on the carriers' submissions and, in general, on the feasibility of preparing aggregate rate evaluation studies conforming to the requirements of Telecom Decision CRTC 84-18.

As of March 31, 1985, a decision from the Commission was pending.

(14) Restructuring of Pay Television Industry

On August 16, 1984, the CRTC issued Decision 84-654 approving the restructuring of the pay television industry into two regional monopolies.

Under the restructuring, First Choice Canadian Communications Corporation (First Choice) reduced its English-language service areas from all of Canada to eastern Canada, comprising Ontario, Quebec and Atlantic provinces. First Choice's obligations to provide financial support to the French-language service, Premier Choix-TVEC, remained unchanged.

In western Canada, the Allarcom Limited group of companies, previously authorized to serve the prairies and British Columbia together with the Ontario "Superchannel" licensee, amalgamated to form a single operation. The new company, Allarcom Pay Television, (APT), will serve Manitoba, Saskatchewan, Alberta, British Columbia, the Yukon and the Northwest Territories.

The applicants had argued that a number of factors associated with direct competition in major markets led to fewer subscribers and lower revenue levels than projected, while expenditures remained high, resulting in severely deteriorating financial circumstances.

The Director submitted a written intervention on July 12, 1984, opposing the application to restructure the industry and appeared before the CRTC on July 24, 1984. The Director argued that the existing Canadian content conditions of licence were the primary cause of the companies' financial difficulties and proposed revisions that would improve the companies' financial situation while retaining competition.

In their application to the CRTC the pay television companies stated that the existing Canadian content requirements would be met if the CRTC approved their proposal to form regional monopolies. However, a financial analysis of the companies' operations commissioned by the Director indicated that the companies would require reductions to their existing Canadian content requirements if they were to have any chance of becoming profitable. The Director raised the Canadian content issue in an attempt to preserve competition in the pay television industry.

The analysis presented by the Director demonstrated that reductions in the 30 per cent time requirement would (i) allow the pay television companies to shift a substantial portion of the money paid out to acquire programming away from the purchase of shelf product and into investments in new productions, (ii) allow the companies to invest more funds in each new production and thereby increase the quality of those productions to a level comparable to foreign product, and (iii) allow the companies to acquire rights to first exhibition for pay television and acquire the rights to income generated by those productions when shown in different media. In so doing, the adjustment in the time quota could benefit the production industry, improve the poor financial condition of the pay television companies and thereby retain the advantages of competition for the general public.

However, the CRTC chose to approve the application. In doing so, the Commission adopted a broad market definition, "home entertainment," and concluded that pay television companies face substantial competition from commercial television, video cassette recorders, new specialty services to be distributed by cable television commencing September 1, 1984, and non-programming cable services such as the NABU network.

(15) Interexchange Competition and Related Issues

This matter was initiated upon an application by CNCP Telecommunications to the CRTC for permission to interconnect with the telephone networks of Bell Canada and B.C. Tel for the purpose of competing with those companies in the provision of long distance (interexchange) public telephone service. Also at issue in the resulting CRTC proceeding was whether to facilitate increased telecommunications competition by eliminating the prevailing carrier tariff restrictions on resale and sharing.

In January 1984 the CRTC issued Telecom Public Notice 1984-6 announcing the CRTC's intention to hold a public hearing on this matter commencing October 2, 1984. The Director intervened in this proceeding and submitted written comments concerning the issues on May 22, 1984. This submission provided comments on a number of issues, but primarily took issue with the assertion of the telephone companies that interexchange competition would reduce their revenues sufficiently to require substantial increases in local exchange rates. The telephone companies claim that long-distance revenues subsidize local telephone service, since local revenues do not cover all assigned costs. The Director reiterated his long-held position that this subsidy argument is founded upon the unwarranted telephone company practice of assigning to the local network all of the costs of equipment used jointly in the provision of both local and long-distance service. The Director has consistently advocated a more rational treatment of the joint costs of providing telephone services, which undermines the legitimacy of any claims that long-distance telephone service subsidizes local telephone service.

On July 16, 1984, the Director filed with the CRTC the written testimony of his two expert witnesses, Manley R. Irwin, an economics professor at the University of New Hampshire, and Dr. John Wilson, an economic consultant with J.W. Wilson and Associates of Washington, D.C. Professor Irwin's evidence concentrated on the effect that interexchange competition has had on the U.S. telecommunications industry and markets, the importance of resale and sharing, and the potential impact on the telecommunications system of bypass technology. Dr. Wilson's evidence also focussed on the U.S. experience with interexchange competition and the many economic benefits to be derived from permitting resale and sharing of basic telecommunication services. However, a major part of Dr. Wilson's evidence centred around the debate concerning the possible existence of a toll to local service subsidy, its direction and magnitude. It was Dr. Wilson's evidence that certain joint costs were in fact sensitive to toll usage and could be properly allocated to that category. On that basis, Dr. Wilson expressed an opinion on the appropriate level of compensation that CNCP should pay Bell and B.C. Tel for access to their networks.

The CRTC commenced public hearings in this matter on October 2, 1984. The Director participated fully in the public hearing through presentation of his expert witnesses for cross-examination and through cross-examination of witnesses appearing for the applicants, respondents and other intervenors. At the public hearing the telephone companies adopted the position that extremely large price increases for local telephone service would result if competitive entry into the long-distance market were permitted. In addition, they claimed that the increasing threat of network bypass by customers was creating pressures to restructure rate schedules. The telephone companies therefore argued that prior to any approval of new competitive entry the CRTC should consider the need for rate rebalancing. Rate rebalancing would realign the rates of all telephone services so as to relate them more closely to what is claimed to be the actual costs of providing the services. As noted above, the basis for this position is found in the telephone companies' unwarranted practice of allocating all joint costs to local services. In Phase III of the CRTC's current Cost Inquiry (see item (5)) the Director has argued that joint costs should be treated as a separate category and not assigned to either local

or long-distance telephone service. Until a fully effective costing methodology is identified and agreed upon, the telephone companies' argument for rate rebalancing and the effect of long-distance competition on local rates remains unsubstantiated. In addition, evidence was obtained from Bell Canada by counsel for the Director during the public hearing on interexchange competition that demonstrated that minimal local rate increases were expected by Bell Canada as a result of competitive entry by CNCP, absent rate rebalancing.

Written final arguments were submitted to the CRTC on December 24, 1984. The Director argued that more telecommunications competition, through the entry of new interexchange carriers and through the elimination of the current tariff restrictions on resale and sharing, are in the public interest. He therefore recommended that the CNCP application be allowed and that the CRTC disallow all prevailing telephone company prohibitions against resale and sharing.

The Director's position was based on evidence placed before the CRTC during the proceeding that indicated that while interexchange competition would not cause any significant increases in local rates, it could result in: (i) increased innovation and efficiency in the telecommunications industry; (ii) lower long-distance rates; (iii) increased demand for long-distance service; and (iv) a positive impact on the level of economic activity across Canada.

Reply argument was filed on January 21, 1985, in response to issues raised by Bell Canada, B.C. Tel and others. The Director's reply argument took issue with Bell Canada and others who argued that there is an onus on any applicant seeking to enter the interexchange market to demonstrate that further competition is in the public interest. In the Director's view such an evidentiary burden on an applicant would be sufficiently great to forestall any and all new entry in the telecommunications sector. The Director's reply argument also took the position that rate rebalancing is not a prerequisite for fair competition and furthermore that it was not a proper issue before the CRTC in this proceeding and should be considered at a later date in the context of another proceeding.

This proceeding was concluded with CNCP filing its Final Reply Argument on February 11, 1985.

As of March 31, 1985, a decision from the CRTC was pending.

(16) Financial Markets: Ontario Securities Commission Policy Review

On May 2, 1984, the Ontario Securities Commission (OSC) issued a press release outlining its intention to convene a policy hearing on the issue of the regulation and ownership of market intermediaries in Ontario. Public hearings into this matter were held in November and December 1984.

The policy review arose as a result of an application by Daly Gordon Securities to divide its brokerage business into two separate entities — one to deal in the regulated market, and the other to deal in the non-regulated (exempt) market.

In the regulated market, market intermediaries have to be registered with the OSC and securities have to be qualified by prospectuses. Neither is necessary in the exempt market where securities, such as government debt instruments and short-term commercial paper, are traded and there are no restrictions on who can participate.

During the public hearing the Joint Securities Industry Committee, comprised of members of the Investment Dealers' Association, took the position that only registered dealers should be allowed to operate in the exempt market. This would have effectively precluded all non-resident securities dealers and foreign dealers with offices in Canada from participating in the Ontario securities market because under the current law registrants cannot be more than 25 per cent foreign-owned. This proposal would also have had the effect of severely limiting participation by domestic financial and non-financial institutions.

The Director's submission to the OSC argued that the prevailing ownership restrictions, which limit the extent to which non-resident and domestic financial and non-financial institu-

tions can participate in the Ontario securities industry, have a negative impact on the ability of capital markets to fully serve the present and future needs of Canadian investors and issuers. Specifically, the Director recommended that: (i) registration requirements not be imposed on persons dealing exclusively in the exempt market; and (ii) registrants be allowed to do exempt trades through affiliated unregistered companies not subject to registration requirements.

In its report to the Ontario Minister of Consumer and Commercial Relations released on February 19, 1985, the OSC made the following major recommendations:

- (a) Only registered dealers should be allowed to act as underwriters and full service brokers in the corporate securities market in Ontario. This would remove the current exemptions for specified financial institutions, exempt purchasers and private underwritings exceeding \$97 000.
- (b) The permissible individual and aggregate foreign ownership limits for an Ontario securities firm should both be raised from the current 10 per cent and 25 per cent to 30 per cent.
- (c) The restrictions applying to the ownership of market intermediaries by financial institutions should be made the same as those applying to non-residents.
- (d) A new category of registrant should be created to allow for the direct entry of firms owned more than 30 per cent by non-residents. In addition, a limit should be imposed on the aggregate capital of firms in this category of 30 per cent of the industry total, and on the capital of individual firms of 1.5 per cent of the industry total.

The OSC decision did not address the broad question of the appropriate organization for the financial system, but dealt only with the issue of the appropriate extent of involvement of financial institutions in capital markets. The OSC accepted the essential arguments put forth by the Director and other respondents that allowing the Ontario securities industry greater access to capital and increased participation by foreign firms in the industry was desirable. However, the OSC's more cautious attitude reflects its over-riding concern for maintaining substantial Canadian control of the industry and a strict segregation of each component of the financial system according to function — the so-called "four pillar" principle.

As of March 31, 1985, the government of Ontario had not yet decided whether to implement the OSC's recommendations.

(17) British Columbia Telephone Company 1984 CRTC Construction Program Review

In response to CRTC Telecom Public Notice 1984-37 the Director participated in the review of B.C. Tel's Five Year Capital Plan conducted by the CRTC during October and November 1984. The Director submitted interrogatories and was represented at the CRTC's final review meeting of November 28 and 29, 1984, to question B.C. Tel officials.

The Director's interest in the review concerned the impact of the company's planned expenditures on the utilization of Telesat Canada's satellite transmission facilities in light of the Telecom Canada/Telesat Canada Connecting Agreement and the Telecom Canada guidelines for the allocation of message toll traffic to satellite facilities. Evidence entered during the CRTC's 1983 public hearing into final rates for Telesat Canada 14/12 GHz services established that Telesat Canada is not directly involved in preparing its utilization forecasts for message toll traffic. Instead, it accepts the forecasts prepared by the telephone company members of Telecom Canada without input or scrutiny. Consequently, the CRTC stated in Telecom Decision CRTC 1984-9 of February 20, 1984, respecting final rates for Telesat Canada 14/12 GHz services, that the CRTC intended to examine the planning guidelines used by Telecom Canada in allocating message toll traffic to satellite facilities, in the context of future construction program reviews of Telesat and the other federally regulated Telecom Canada members.

The Director's view is that the exclusion of Telesat Canada from the planning and forecasting of telephone company initiated traffic is unacceptable as it is in Telesat's interest to urge the telephone companies to direct increasing percentages of total message toll traffic to

Telesat. The Director holds that exclusion of Telesat from the planning process indicates the telephone companies' sensitivity to the conflict of interest, which the Director contends is inherent in the Telecom Canada/Telesat Connecting Agreement. Furthermore, it emphasizes the telephone companies' potential bias in favour of allocating message toll traffic to their land-based systems, which could be more cost effectively transmitted by the satellite facility.

During the 1984 review meeting B.C. Tel officials denied that the company had any bias against the use of satellite facilities. The officials stated that traffic is allocated to the most economically efficient transmission medium when no technical barriers, such as double satellite hops, prohibit doing so. During the review conflicting information was cited concerning the minimum distance over which satellite transmission is economical. The company exercised its right to file in confidence studies conducted on this question, thereby limiting the ability of interested parties to scrutinize the company's findings. Company officials acknowledged that there is no B.C. Tel policy directed towards expanding the use of satellite facilities or resolving existing technical limitations of the terrestrial system, particularly for the purpose of enhancing the potential for satellite facility utilization.

Evidence before the CRTC concerning B.C. Tel's Five Year Capital Plan is included in the record of the CRTC's examination of B.C. Tel's current rate application. The CRTC is expected to address the traffic allocation issue in its decision. As of March 31, 1985, the CRTC had completed the public hearing phase of the proceeding but had not yet rendered a decision.

(18) Cable Television Rate Indexing

In response to CRTC Public Notice 1984-305, the Director submitted comments to the CRTC opposing its proposal to permit cable television companies to increase their monthly fees annually by a maximum amount equal to 80 per cent of the annual increase in the Consumer Price Index without the prior approval of the CRTC.

In his submission the Director argued that rate indexing is not an appropriate regulatory treatment of cable rates given the industry's natural monopoly characteristics and the associated need to effectively scrutinize rates as a means of protecting the public interest. In this regard the Director argued that rate indexing would not allow the CRTC to protect subscribers from excessive rates because indexing does not (i) compel cable firms to reduce costs, (ii) provide the CRTC with the opportunity to pressure cable firms to reduce costs, (iii) ensure that monopoly rents are applied to developing the Canadian broadcasting system in accordance with the firm's licence to operate, (iv) provide an incentive to improve productivity, (v) ensure that productivity gains that may occur are reflected in rate adjustments, and (vi) pass through to subscribers the regulatory cost savings that might result from indexing.

The CRTC scheduled a public hearing to commence April 30, 1985, to consider comments received in response to Public Notice 1984-305.

(19) Structural Separation of Multiline and Data Terminal Equipment

On November 9, 1984, the CRTC issued Public Notice 1984-66 requesting comments on whether Bell Canada and B.C. Tel should be required to provide multiline telephone and data terminal equipment and related services only through a separate company.

In issuing the notice the CRTC expressed its concern that the established telephone carriers, which also supplied monopoly services, could use the revenues from its regulated monopoly services to cross-subsidize its competitive operations such as the provision of terminal equipment, and thereby frustrate the development of competition.

The Director submitted comments arguing that requiring telecommunication carriers to provide competitive services through a separate corporation is a desirable and effective measure for the detection and prevention of possible anti-competitive cross-subsidization of such services. The Director also commented that such a policy would permit the removal of competitive services from the regulatory arena and thereby reduce the regulatory burden on the affected firms.

Bell Canada and B.C. Tel were requested to submit their reply comments by April 2, 1985. A decision from the Commission on whether to impose a structural separation requirement on the companies or to hold public hearings on the matter is expected later in 1985.

Transport

(20) Domestic Air Fare Policy Review

Pursuant to a notice issued in December 1983 the Air Transport Committee (ATC) of the Canadian Transport Commission (CTC) held public hearings on the regulation of domestic air fares, for both scheduled and charter services. The Director intervened in the hearings which were held at various locations in Canada from February to April 1984. It should be noted that although the main focus of the hearings was the issue of domestic fares many other aspects of the economic regulation of air transport were examined and, in part, addressed by the ATC in its report.

As noted at page 91 of the 1984 Annual Report, two witnesses were called by the Director. Dr. William Jordan, a professor of economics at York University, gave evidence on a comparison of fare levels between the regulated airline industry in Canada and the deregulated (since January 1, 1979) industry in the United States. Mr. Robert J. McAdoo, a managing officer with People Express Airlines, reviewed the successful performance of that carrier as a low-cost operation in the U.S. industry.

The Interim Report of the Hearing Panel was released on May 9, 1984, in which it recommended continued economic regulation of the air carrier industry, but reform along the lines suggested in the Report of the House of Commons Standing Committee on Transport, published in December 1982. Specific recommendations by the ATC included retaining the policy of defining local, regional and national carriers and the distinctions between charter and scheduled services. By way of reform, the report called for giving greater weight to the benefits of competition in findings of public convenience and necessity for licence applications, streamlining licence application procedures and establishing a zone of flexibility within which carriers would be free to set fares.

Almost coincident with the issuance of the ATC Interim Report, the Minister of Transport announced on May 10, 1984, a "New Canadian Air Policy." This policy was the result of work by an interdepartmental working group that had examined the overall issue of the economic regulation of air transport. The Director and members of his staff were active in this exercise.

The policy changes announced by the Minister of Transport, which only applied in Southern Canada, went further than the recommendations of the Interim Report. The practice of distinguishing between local regional and national carriers in route applications was ended, carriers were encouraged to apply to the Minister to have operating restrictions removed from their licences and to apply to the ATC to consolidate their licences to allow greater flexibility in route structure. As a result of the policy announcement a freer pricing structure than that recommended in the Interim Report was established in September 1984.

Given that the policy change in effect superseded the ATC recommendations it is not expected that a final report will be prepared by the ATC.

(21) Federal Express — Application to Amend Its Commercial Air Services Licence

In December 1982 the Director intervened before the ATC in support of an application by Federal Express to amend its licence. Details of the ATC hearing and decision can be found at page 82 of the 1984 Annual Report. As of March 31, 1985, no date had been set in Federal Court for the hearing of the objectors' appeal against the ATC's decision.

(22) Air Ontario Ltd. — Application for Scheduled Passenger Service, Sudbury and North Bay, Ontario

On January 19, 1983, the Director intervened in support of the application by Air Ontario to provide service between Toronto, North Bay and Sudbury, Ontario. Details can be found at page 83 of the 1984 Annual Report.

The application was denied by the ATC. On May 10, 1984, the Minister of Transport as part of his announcement of a new domestic air policy, allowed Air Ontario's appeal of the decision.

(23) *Austin Airways Intervention*

On July 13, 1984, an intervention statement in support of an application by Austin Airways Ltd. to establish a scheduled service on the points Kapuskasing-Timmins-Toronto was filed with the ATC. The statement made the point that allowance would offer needed competition to the existing carriers on the route, Air Canada and Norontair, and would be in accordance with the new domestic air policy of allowing competition among local, regional and national air carriers.

By Decision No. 8526 dated December 7, 1984, the ATC approved this application citing favourably the Director's comments and the new Domestic Air Policy.

(24) *Pacific Western Airlines — Application to Consolidate Licences*

On September 10, 1984, an intervention statement before the ATC was filed in the matter of an application by Pacific Western Airlines (PWA) to consolidate two of its licences to operate commercial air services and to add the point Thunder Bay. The statement was filed in support of PWA's application and in answer to objections filed by Nordair and CP Air. Opposition was expressed to a proposal by CP Air that a decision in this matter be delayed pending the outcome of the appeal in the Federal Express case. Nordair opposed PWA's application to serve the point Thunder Bay, maintaining present services provided by itself and Air Canada were adequate. The intervention supported PWA's application on the grounds that approval would be consistent with the new Domestic Air Policy and that PWA had provided sufficient evidence to find the proposed service to be consistent with the public convenience and necessity.

This application would allow PWA to institute new services linking western and central Canada and provide a one-stop Vancouver-Toronto link. Approval would be an effective first step in allowing PWA to become a third national carrier.

By Decision No. 8477 dated November 16, 1984, the ATC approved PWA's application.

(25) *Kelowna Flightcraft — Application to Amend Its Commercial Air Services Licence*

On September 19, 1984, the Director filed an intervention statement before the ATC supporting an application by Kelowna Flightcraft Air Charter Ltd., doing business as Inter-City Air, to have operating restrictions removed from its scheduled service licence allowing service between Penticton, Kelowna, and Kamloops and Vancouver. A previous intervention by the Director had been a factor in the original decision by the ATC to grant this licence. Approval was recommended on the basis that changed circumstances, in particular the withdrawal of flights by Pacific Western Airlines, made continuation of the restrictions obsolete. As well, approval would be consistent with the new Domestic Air Policy. It was not necessary for the ATC to make a decision on this matter as the restrictions were removed by the Minister of Transport after an application by Kelowna made pursuant to the air policy statement of May 10, 1984.

It should be noted that Kelowna Flightcraft has since withdrawn from this market due to competition from other carriers. The company continues to operate as a charter carrier.

(26) *Nordair — Application to Serve Sudbury, Timmins and North Bay, Ontario*

On October 5, 1984, the Director filed an intervention statement with the ATC supporting an application by Nordair to add the points Sudbury, Timmins, and North Bay, Ontario to its licences. Approval of the application was recommended on the basis that it would allow greater competition and improved service to these points, and would be in keeping with implementation of the new Domestic Air Policy.

By Decision No. 8765 dated March 25, 1985, the ATC approved this application.

(27) *Voyageur Airways Ltd. — Application to Consolidate Licences*

The Director filed an intervention statement with the ATC on October 22, 1984, supporting an application by Voyageur Airways Ltd. to amend and consolidate several of its licences to operate scheduled commercial air services. Approval of the application was recommended because it would allow Voyageur Airways Ltd. to be a more effective competitor by giving the carrier greater flexibility and freedom in the formulation of its route structure and the use of its equipment. It was also pointed out that approval would be consistent with the objective of the new Domestic Air Policy, which called for the ATC to give greater emphasis to the benefits of competition in rendering its decisions on applications to operate commercial air services.

By Decision No. 8640 dated February 15, 1985, the ATC approved this application.

(28) *Eastern Provincial Airways — Application to Consolidate Licences*

On December 7, 1984, the Director filed an intervention statement with the ATC supporting an application by Eastern Provincial Airways to consolidate its licences. Approval was recommended on the basis that it would give the carrier greater flexibility to react to changes in market demand and be generally beneficial to the competitive environment of the industry.

By Decision No. 8770 dated March 27, 1985, the ATC approved this application.

(29) *Québec Aviation Ltd. — Application to Consolidate Licences*

On March 15, 1985, the Director filed an intervention statement with the ATC supporting an application by Québec Aviation Ltd. to consolidate its licences to operate commercial air services. Approval was recommended on the basis of its being beneficial to the competitive environment of the industry and in keeping with the implementation of the new Domestic Air Policy.

As of March 31, 1985, the decision of the ATC was pending.

(30) *Regulations Affecting Freight Interswitching between Canadian Railways*

The Director has twice provided written submissions to the Railway Transport Committee (RTC) of the CTC on the review of railway freight interswitching. The comments of July 29, 1983, are summarized at page 86 of the 1984 Annual Report.

In his second written submission, dated July 3, 1984, the Director proposed extending the present four-mile interswitching limit to the commercial and industrialized limits of each economic zone so as to provide intramodal rail competition to many more shippers than is presently the case. In addition, the Director submitted that any captive shipper not covered by this extension should be allowed to petition the CTC for regulated interswitching. The Director suggested that switching charges should be cost-based and that a formula be developed by the CTC, in consultation with the railways, for determining charges that are compensatory but nondiscriminatory.

The report of the RTC was pending as of March 31, 1985.

(31) *Canada Southern Railway*

As described at pages 86 and 87 of the 1984 Annual Report, the Director opposed the application by the Canadian National Railway Company (CN) and Canadian Pacific Limited (CP), pursuant to section 27 of the National Transportation Act, to purchase, as a partnership, the rail properties in Southern Ontario referred to as the Canada Southern.

During the summer of 1984 the RTC held a public hearing as part of its investigation under section 27. The Director was represented by counsel and called as an expert witness Robert L. Banks of the firm of R.L. Banks & Associates, Inc., Washington, D.C. Mr. Banks testified that the CN-CP proposal, if consummated, would have significant anticompetitive effects on transport markets in southern Ontario. He stated that the alternatives for disposing of the properties — the applications made by Erie Express Railways Corporation and Trans-Ontario Railways Company — were to be preferred to the CN-CP proposal.

In final argument counsel for the Director urged RTC to disallow the application of CN-CP on the grounds that it met the test contained in section 27 of the National Transportation Act of unduly restricting competition. Among other considerations, it was argued that the proposal was a defensive parallel merger that would eliminate a competitor and was unlikely to forestall the effective competition of all non CN-CP carriers serving the market. In view of CN-CP's overwhelming dominance in most rail markets, it was recommended that there should be a *per se* finding of "unduly restricting competition," for such applications, when alternative buyers exist.

In a decision dated December 13, 1984, the CTC held that none of the three proposed acquisitions of the Canada Southern unduly restricted competition or were otherwise prejudicial to the public interest pursuant to subsection 27(4) of the National Transportation Act. The CTC found it was not required to choose among the three proposed acquisitions, and decided not to disallow any of the proposed acquisitions: (i) CN-CP acting as a partnership, (ii) Erie Express Railway Corporation, or (iii) Trans-Ontario Railway Company.

In effect, the decision allowed the CN-CP acquisition to be consummated since it was the only party with an agreement with Conrail, the owner of the Canada Southern. Both Erie Express and Trans-Ontario petitioned Cabinet to vary the decision. On March 29, 1985, Cabinet denied the petitions and instructed that a regulation pursuant to section 259 of the Railway Act be prepared preventing the abandonment of the operations of the Canada Southern before January 1, 2005.

(32) *Staggers Rail Act of 1980*

In August 1984 the RTC gave notice of a public hearing to inquire into the known effects and implications for Canadian railways and shippers of the deregulation of the U.S. rail industry resulting from enactment of the *Staggers Rail Act of 1980*. The Director called evidence and made representations before the Committee in respect of increased intramodal rail competition both domestically and in transborder markets.

The Director introduced the results of a survey of rail users conducted on his behalf in the fall of 1983 by E.M. Ludwick & Associates, Winnipeg, Manitoba. Its principal findings were that:

- (a) a consensus exists among surveyed rail users for a significant limitation of the ability of the railways to set prices collectively;
- (b) increased intramodal rail competition is viewed as beneficial; and
- (c) 55 per cent of respondents' total rail expenditures is captive to either CN or CP.

The Director also called Walter G. Rich, President and Chief Executive Officer of the Delaware Ostega Corporation, a short line railway in the State of New York and Lawrence McCaffrey, author of *Starting a Short Line*, a publication of the American Short Line Railroad Association, as his witnesses. They described the growth of short line railroads in the U.S. under deregulation and the role that short lines could play in Canada, particularly in Canada-U.S. transborder markets.

Cline D. Barton, a rail consultant with the firm of R.L. Banks & Associates, Inc., Washington, D.C., also appeared on behalf of the Director. He described how the substitution of market forces for economic regulation would benefit Canadian shippers presently served by only one railway. Such a policy of commercial freedom providing unimpeded entry into existing and prospective markets would give other carriers the same opportunities of new market access that CN and CP presently possess through joint arrangements with their U.S. rail carrier subsidiaries.

Of particular concern in this hearing was that the *Staggers Act* has permitted U.S. rail carriers to surcharge their portion of joint-through rates, as well as to unilaterally cancel such rates and close international gateways.

The Director submitted that promoting easier entry by granting running rights, expanding interswitching zones and easing access to new carrier entrants such as short lines, includ-

ing transborder entry by U.S. rail carriers, would not only provide more efficient international routings but would also deter the closing of transborder gateways.

The Director urged the RTC to exercise its authority to restrict collective ratemaking by the Canadian railways on transborder traffic to participating carriers on joint movements.

With respect to confidential contracts the Director called for amendments to sections 275 and 380 of the Railway Act to permit secret rebates on transborder traffic. The Director emphasized that disclosure of the terms of secret contracts between the rail carriers, as advanced by CN and CP, would minimize rather than promote intramodal rail competition.

In December 1984 the RTC released its final report. Its recommendations — particularly its endorsement of confidential contracts, including secret rebates, on transborder traffic — have significant competition policy implications. The RTC did not accept the submission of the Canadian railways that they be privy to each other's contracts and recommended that section 279 of the Railway Act be amended to prohibit railway agreements on confidential contract rates.

The RTC noted that inasmuch as its inquiry was restricted to international (Canada-U.S.) traffic, its recommendations would lead to a regulatory regime for transborder traffic that would differ from purely domestic traffic. It recommended an early investigation on applying its proposals to domestic traffic.

(33) *Manitoba Review of Motor Carrier Regulations*

Page 90 of the 1984 Annual Report summarizes written comments made to the government of Manitoba's Task Force Review of Motor Carrier Regulations in November 1983. Subsequently in September 1984 the Task Force published its report titled *Recommendations on Motor Carrier Regulation*. The Director wrote to the Honourable John S. Plohma, the Minister of Highways and Transportation, on October 22, 1984, and attached a detailed set of comments regarding the Task Force report. The report was generally supported on the basis that the changes proposed would represent an important step in placing a greater reliance on competition to improve overall performance in the trucking industry in Manitoba. At the same time, the Minister was urged to take a stronger initiative with regard to liberalizing entry into the industry than had been recommended by the Task Force. Finally, with respect to changes recommended for the regulation of intraprovincial rates, it was suggested that consultation take place to ensure that no confusion developed over the application of The Highway Traffic Act and the Combines Investigation Act.

Subsequently, meetings between the Chairman of the Manitoba Motor Transport Board and members of the Bureau have been held to discuss these and other issues.

(34) *R. McCargar Trucking Ltd. — Operating Authority Application Before the Manitoba Motor Transport Board (MMTB)*

R. McCargar Trucking Ltd. is owned by an Edmonton-based trucking firm specializing in moving used household goods. The firm is not affiliated with any of the national van line companies.

In April and May 1984 the MMTB held a four-day hearing into an application by McCargar for operating authority. The Director intervened in this matter in support of the applicant. In the past the MMTB had, with one limited exception, refused to authorize any carrier to transport used household goods extra-provincially (into or out of Manitoba) unless it had van line affiliation. All of the objectors to this application were van line agents.

The hearing commenced with a challenge by the respondents to the applicability of section 27.1 of the Combines Investigation Act to the hearing. It was argued that section 27.1 refers to submissions made with respect to "the maintenance of competition," and that since this matter concerned a new operating authority application it was not dealing with maintaining competition but rather increasing competition. The Director's counsel argued that implicit in the section was that competition be maintained at an acceptable level, which invariably meant that increased competition be encouraged. The MMTB ruled in the Director's favour.

The Director in his representation reviewed the anti-competitive history of the extra-provincial moving industry and argued for increased competition in the industry, especially as it applied to Manitoba (see page 73 of the 1984 Annual Report). He argued that the licensing of independent extra-provincial movers, such as the applicant, would provide a source of price and product competition.

The Board denied the application on November 8, 1984, on the basis that the application failed to prove that the public convenience would be promoted.

(35) *Kleysen Transport*

The Director intervened in June 1984 before the Manitoba Motor Transport Board in support of an application by Kleysen Transport, a family-owned Winnipeg trucking company, for general freight authority in truckload lots to and from the Manitoba-USA border.

The Director's evidence in a submission by an expert witness, Professor Norman Bonsor of Lakehead University, emphasized the inability of Kleysen Transport to obtain a balanced international traffic flow due to operating restrictions on their authority. It was argued that these restrictions directly led to a reduction in competition in the for-hire trucking sector on transborder movements. The submission concluded that granting the authority would promote public necessity, maintain competition and would not lead to the existence of excess capacity.

On October 12, 1984, the application was granted.

(36) *V.O.T. Transport Ltd.*

On September 14, 1984, the Director filed a notice of intention to intervene pursuant to section 27.1 of the Act before the Ontario Highway Transport Board (OHTB) in the matter of an application by V.O.T. Transport Ltd., a British Columbia firm engaged in the transportation of automobiles. The application sought authority to conduct this business from Ontario.

The hearing before the OHTB commenced on January 30, 1985. There was an objection filed to the Director's appearance, which was overruled by the hearing chairman on the basis that section 4 of Ontario Regulation 716 (made pursuant to the Public Commercial Vehicles Act) allows any person to make representation to the OHTB in respect of an application.

The Director introduced evidence through an expert witness, Professor Norman Bonsor, to demonstrate that allowing the application would introduce significant competition in the transportation of automobiles between Ontario and British Columbia, which is presently dominated by the rail carriers.

The hearing was adjourned until June 3, 1985.

(37) *Hillside Auto Carrier Limited*

On October 3, 1984, the Director filed notice of his intention to intervene before the New Brunswick Motor Carrier Board in the matter of an application by Hillside Auto Carrier Limited for authority to transport new automobiles, vans and trucks to and from all locations in New Brunswick and to other jurisdictions as authorized.

The hearing commenced on November 6, 1984. At that time objections were raised as to the jurisdiction of the Director to intervene. These were resolved in favour of the Director and the hearing commenced on January 28, 1985, with the arguments of the applicant and objectors. The Director introduced evidence on March 6, 1985, through an expert witness, Professor Norman Bonsor, to demonstrate that allowance of Hillside's application would introduce significant competition and that the transportation of automobiles was not a business subject to significant economies of scale and therefore not subject to market failure.

A decision in this matter was pending as of March 31, 1985.

(38) *Multimodal Integration*

On May 16, 1984, the Director provided comments to the CTC's Water Transport Committee with respect to proposed terms of reference for an inquiry into the railway companies'

expansion into other modes of transport, particularly water and truck. The thrust of these comments was that the inquiry was too narrow, that it should not focus exclusively on the situation of the Port of Halifax, but rather should engage in a broad benefit-cost analysis of multimodal integration. An extensive list of issues and research questions was appended to the comments.

The thrust of these comments was to urge that basic empirical evidence be provided on the nature and extent of multimodal integration, whether integration by acquisition is artificially induced by regulation, and finally, whether vertical integration has resulted in anticompetitive behaviour.

In March 1985 the CTC decided to make this issue part of its planned hearings examining rail policy more generally.

4. Other Matters

(1) *Task Force on Computer Reservation Services*

In its report on the Domestic Air Fare Hearings the ATC recommended that a task force be established to examine the use of computer reservation systems in the air carrier industry. Accordingly, a group with representatives from Transport Canada, the CTC, the Air Transport Association of Canada, the Alliance of Canadian Travel Associations and the Department of Consumer and Corporate Affairs was formed.

In October 1984 this group began to examine the issue of bias in the operation of these systems and related matters. As of March 31, 1985, the report of the Task Force to the Minister of Transport was being prepared.

(2) *Monitoring Order of Prohibition — The Transportation of Used Household Goods*

The Prohibition Order issued by the Supreme Court of Ontario on December 15, 1983, in the transportation of used household goods case is described in the 1984 Annual Report at page 24. During the year the Bureau monitored the Order and ensured that its existence and significance were appreciated by the household goods transport industry and the general public.

(3) *Canadian Conference of Motor Transport Administrators*

In June 1984 a member of the Director's staff became an *ad hoc* member of the Standing Committee on Motor Carriers of the Canadian Conference of Motor Transport Administrators (CCMTA). The CCMTA is an organization of motor carrier regulators and transport policy makers in Canada including representatives of all the provinces, the territories and the government of Canada. The Standing Committee on Motor Carriers has been charged with implementing a series of reforms in the regulation of extra-provincial trucking announced by the federal and provincial ministers of transport in May 1984.

Members of the Director's staff have met independently of the CCMTA with officials of a number of provinces to provide assistance regarding the application of the Combines Investigation Act and changes to their regulatory policy that would have the effect of introducing more competition in the trucking industry.

(4) *Ontario Rates Committee*

A member of the Director's staff is a member of this committee, which has been examining the reform of rate regulation for the trucking industry in Ontario. The committee's final report is expected in April 1985.

(5) *Container Shipping Services — Port of Montréal*

This matter relates to the disposition of documents seized under section 10 of the Combines Investigation Act, which the Federal Court has ordered retained by the Court Adminis-

trator pending the resolution of the challenge to these seizures under the Charter of Rights and Freedoms. The facts of this particular case are summarized at pages 92 and 93 of the 1984 Annual Report.

As of March 31, 1985, the documents in question were still deposited with the Federal Court Administrator.

CHAPTER VII

MARKETING PRACTICES BRANCH

1. Activities

The Marketing Practices Branch deals with complaints and other information from a broad variety of sources relating to violations of the misleading advertising and deceptive marketing practices provisions of the Act. These provisions play a significant role within the overall framework of competition policy in ensuring that the market mechanism operates effectively and that consumers are protected from deceptive practices. It was with this purpose in mind that the original misleading advertising provisions were included in the Combines Investigation Act in 1960 and 1969 and that the scope of these provisions was expanded by the amendments to the Act that came into force on January 1, 1976.

The misleading advertising and deceptive marketing practices provisions are contained in sections 36 to 37.3 and apply to all persons promoting the supply or use of a product or promoting any business interest. The responsibilities of the Branch are therefore not restricted to any particular industry or type of distribution. Although the legislation in general relates to all representations made to the public and to specified marketing practices, some provisions are restricted solely to representations in the form of advertisements.

Since the number of complaints is large and the staff resources available to investigate them are limited, it is necessary to concentrate on those cases most likely to bring about an overall improvement in the quality of market information directed to the public, thereby contributing to the objectives of the legislation. The principles followed in assessing the priority of complaints are the degree of coverage of the representation, its impact on the public and the deterrent effect of a successful prosecution. A high priority is also given to cases that will afford a court the opportunity of establishing new principles or of clarifying the law.

The Branch continues to operate on a decentralized basis with investigating officers stationed in 13 offices across Canada. Regional managers, who are located in six of these offices, also maintain the necessary liaison with provincial authorities responsible for consumer protection and trade practices matters. (A complete list of field offices can be found in Appendix VIII.)

2. Proceedings

Prosecutions completed during the year under sections 36 to 37.2 are listed in Appendix II showing the products involved, the persons charged, the location of the offence and the details of the disposition. Summaries of cases in which convictions are registered appear quarterly in the *Misleading Advertising Bulletin* and appeals in such cases are also noted. Prosecutions that are not completed are listed in Appendix IV.

(1) Operations under Sections 36 to 37.2 of the Act

The following table shows operations under the present misleading advertising and deceptive marketing practices provisions, beginning with 1980-81. Operations before that time are to be found in previous reports.

(2) Subsection 30(2) Order of Prohibition in Relation to Section 36.3

Shaklee Canada Inc. — Food supplements, cleaning and personal care products

This inquiry commenced in June 1978 following receipt of a complaint alleging that Shaklee Canada Inc. was operating a scheme of pyramid selling.

OPERATIONS UNDER MISLEADING ADVERTISING AND DECEPTIVE MARKETING PRACTICES PROVISIONS

Part I - Inquiries and Investigations

	1980-81	1981-82	1982-83	1983-84	1984-85
(i) Total complaints received	9 382	9 782	11 357	11 034	10 632
(ii) Number of files opened	8 373	8 557	9 875	10 091	9 816
(iii) Number of complete investigations	2 147	2 319	24 457*	2 068	2 145
(iv) Referrals to Attorney General under section 15:					
—section 36(1)(a)	93	71	102	113	79
(1)(b)	18	10	25	19	13
(1)(c)	—	1	—	1	1
(1)(d)	11	26	28	24	30
36.1	—	1	—	2	1
36.2	4	—	—	1	—
36.3	—	—	1	7	3
36.4	—	—	—	—	—
37	12	1	4	2	4
37.1	28	30	34	5	4
37.2	1	2	5	7	1
(v) Formal applications for inquiries	—	—	1	—	1
(vi) Cases formally discontinued	6	2	3	—	4
(vii) Cases referred to Attorney General and closed on his recommendation:					
—section 36(1)(a)	2	10	5	11	5
(1)(b)	—	1	—	—	4
(1)(c)	—	—	—	—	—
(1)(d)	—	—	1	1	1
36.3	—	—	—	1	—
37.1	—	2	—	—	—

Part II - Prosecutions

	1980-81	1981-82	1982-83	1983-84	1984-85
(i) Number of cases before the courts at beginning of year (not including appeals):					
—section 36(1)(a)	50	49	75	67*	62
(1)(b)	5	11	10	17	19
(1)(c)	1	1	1	1	—
(1)(d)	4	6	11	16*	11
36.1	1	—	—	1	2
36.2	—	2	2	2	1
36.3	—	—	—	—	3
36.4	—	—	—	—	—
37	1	2	5	3	2
37.1	10	14	40	42*	15
37.2	1	—	—	—	3
(ii) Cases un/er appeal at beginning of year:					
—section 36(1)(a)	12	9	11	12*	17
(1)(b)	2	—	—	3	5
(1)(c)	—	—	—	—	—
(1)(d)	1	2	1	1	1
36.1	—	—	—	—	—
36.2	1	1	—	—	—
36.3	—	1	1	1	2
36.4	1	—	—	—	—
37	1	1	1	1	1
37.1	—	2	1	2	5
37.2	—	1	1	—	—

Part II - Prosecutions—(Continued)

	1980-81	1981-82	1982-83	1983-84	1984-85
(iii) Proceedings commenced during year:					
—section 36(1)(a).....	78	98	93*	97	78
(1)(b).....	13	14	22	21	13
(1)(c).....	1	—	1	1	—
(1)(d).....	11	25	25	21	41
36.1.....	—	—	2	1	3
36.2.....	3	—	—	1	—
36.3.....	1	—	—	5	4
36.4.....	—	—	—	—	—
37.....	3	8	1	2	5
37.1.....	24	31	33	5	1
37.2.....	2	3	1	9	3
(iv) Completed cases, convictions:					
—section 36(1)(a).....	72	51	76	73	69
(1)(b).....	7	13	8	10	12
(1)(c).....	—	—	—	1	—
(1)(d).....	6	18	10	16	23
36.1.....	1	—	—	—	3
36.2.....	1	1	—	2	1
36.3.....	—	—	—	—	1
36.4.....	—	—	—	—	—
37.....	—	4	1	3	3
37.1.....	15	4	24	28	19
37.2.....	1	3	2	6	5
non-convictions**					
—section 36(1)(a).....	19	19	26	24	22
(1)(b).....	2	2	4	7	9
(1)(c).....	1	—	1	1	—
(1)(d).....	2	3	9	10	15
36.1.....	—	—	1	—	1
36.2.....	—*	—	—	—	—
36.3.....	—	—	—	—	—
36.4.....	1	—	—	1	2
37.....	1	1	2	—	3
37.1.....	3	2	5	1	1
37.2.....	1	—	—	—	1
(v) Cases under appeal at end of year:					
—section 36(1)(a).....	9	11*	12*	17	14
(1)(b).....	—	—	3	5	2
(1)(c).....	—	—	—	—	—
(1)(d).....	2	1	1	1	1
36.1.....	—	—	—	—	—
36.2.....	1	—	—	—	—
36.3.....	1	1	1	2	3
36.4.....	—	—	—	—	—
37.....	1	1	1	—	1
37.1.....	2	1	2	5	1
37.2.....	1	1	—	—	—
(vi) Cases before the courts at end of year (not including appeals):					
—section 36(1)(a).....	49	75*	67*	62	52
(1)(b).....	11	10*	17	19	14
(1)(c).....	1	1	1	—	—
(1)(d).....	6	11	16*	11	14
36.1.....	—	—	1	2	1
36.2.....	2	2	2	1	—
36.3.....	—	—	—	3	3
36.4.....	—	—	—	—	—
37.....	2	5	3	2	1
37.1.....	14	40	42*	15	—
37.2.....	—	—	—	3	—

* Preliminary figures revised.

** Including conditional and absolute discharges, stays of proceedings, etc.

Proceedings for an Order of Prohibition were brought in the Federal Court. The case was heard before Mahoney J. of the Federal Court on January 27 and 28, 1981, and on February 11, 1981, the Information was dismissed. A notice of appeal was filed by the Crown, but an unrelated jurisdictional challenge to the authority of the Federal Crown Prosecutor to prosecute criminal cases in Alberta delayed hearing of the appeal. The appeal is now scheduled to be heard April 15, 1985. (For statistical purposes this case is recorded under section 36.3.)

3. Discontinued Inquiries Reported to the Minister in Accordance with Subsection 14(2) of the Act

(1) *Photographic Film Processing*

This matter arose as a result of telephone solicitations made by a film processing outlet in July 1982 in which comparisons were made between the cost of film processing at the outlet and at a competing outlet. It was determined that, contrary to the representation conveyed, a competitor offered lower prices.

A search was conducted of the film processing outlet in October 1982. Documentation seized indicated that a price survey carried out in April 1982 was the source of the price comparison. However, one competitor had lowered its prices 12 days prior to the telephone solicitations, rendering the representations inaccurate. It was also disclosed that the represented savings were available if the cost of the whole package provided was considered. In view of the foregoing, it was determined that the matter did not warrant further inquiry. Accordingly, the inquiry was discontinued and reported to the Minister on October 3, 1984.

(2) *Motion Pictures*

This matter arose when a major motion picture exhibitor expressed concern that a joint promotion involving a chain of pharmaceutical outlets and a competing exhibitor would affect undertakings provided to the Director by the major motion picture exhibitors. The undertakings were intended to allow equal access by all exhibitors to runs of motion pictures and it was alleged that the promotion represented that specific titles would be shown at the theatres involved. A question was raised as to whether the unavailability of specific titles in some areas as a result of the undertakings would raise a question under paragraph 36(1)(a) of the Act.

A search of the pharmaceutical company yielded evidence that all the advertised titles were not available in all communities where the promotion occurred. However, it was determined that the language of the advertisement merely conveyed the impression that some and not all of the film titles referred to would be seen in a particular community. Moreover, the undertakings entered into by the distributor had lessened its ability to obtain specific films. In view of these facts, it was determined that the matter did not warrant further inquiry. The inquiry was therefore discontinued and reported to the Minister on November 26, 1984.

(3) *Photocopy Equipment*

This inquiry commenced in January 1983 following receipt of a complaint alleging that representations made by a photocopier distributor concerning the guarantee offered on photocopy equipment were false or misleading. Purchasers of equipment received repair services at no cost, but were charged extra on the purchase of photocopying supplies.

The inquiry disclosed that the cost of such supplies was not substantial when compared to the value of the repair services provided under the guarantee. It was, accordingly, determined that the representation could not be established to be materially misleading and the inquiry was discontinued and reported to the Minister on March 28, 1985.

(4) *Animal Shelter*

This inquiry commenced in March 1983 following receipt of a formal application under section 7 of the Act. The applicants alleged that an organization that had represented itself to the public as a charitable, non-profit organization was in fact a private company.

During the inquiry evidence was gathered that indicated the organization was incorporated under Part II of the Canada Corporations Act as a non-profit entity, had applied to Revenue Canada for registration as a charitable organization, and was not involved in any activities of a commercial nature. In view of these facts, the inquiry was discontinued and reported to the Minister on March 29, 1985.

4. Other Matters

(1) *Program of Compliance*

The staff of the Branch provided 293 written advisory opinions to firms that had requested review of proposed promotional material under the Director's program of compliance. A majority of compliance opinions relate to proposed promotional contests. In addition, a large number of informal discussions (approximately 1 140) were held with individual businessmen who wished clarification of the possible application of the misleading advertising and deceptive marketing practices provisions of the Act.

(2) *Misleading Advertising Bulletin*

During the year the Branch's quarterly publication, the Misleading Advertising Bulletin, contained summaries of concluded prosecutions that resulted in convictions under the misleading advertising and deceptive marketing practices provisions of the Act and statements of the Director's position in relation to various issues. Among the issues covered in the Bulletins published during the fiscal year were the Branch's interpretation of representations under paragraph 36(1)(a) employment-advertising and sentencing patterns. In addition, the Branch added to the Bulletin a feature consisting of summaries of compliance opinions provided to members of the business community. Copies of recent issues of the Misleading Advertising Bulletin are available from the Communications Branch of the department.

(3) *Enquiries, Other Complaints and Media Contacts*

In addition to the services provided under the program of compliance, the Branch undertakes other non-enforcement activities designed to achieve a wide dissemination of Branch policies and general information on the misleading advertising and deceptive marketing practices provisions. During the year, the Branch responded to 15 603 enquiries for information from the public and from the business community; individual staff members responded to 176 requests for interviews and information from the media; and 169 educational seminars were given before various business-interest and academic groups. As well, the Branch received 607 complaints that were subsequently referred to other authorities.

CHAPTER VIII

ECONOMIC ANALYSIS AND POLICY EVALUATION BRANCH

1. Activities

The Economic Analysis and Policy Evaluation Branch provides analytical and policy evaluation support for the Director and the Bureau of Competition Policy. In response to directives from senior management and a growing awareness of the need to assess the competitive implications of a range of government policies, the Branch has been increasingly involved in interdepartmental policy development work in areas that interface with the Combines Investigation Act. In addition, the Branch is responsible for coordinating the Ministerial and Deputy Ministerial briefing activities in the Bureau, and representing the Director's interests in international forums, including multilateral policy discussions and bilateral antitrust relations, especially with the United States.

The Branch also provides analytical support to the Bureau in relation to enforcement of the Act. The Branch has a separate, ongoing staff function for strategic planning in the Bureau. Furthermore, the Branch prepares submissions by the Director to federal regulatory boards and tribunals, pursuant to section 27.1 of the Act.

Finally, to contribute to the understanding and maintenance of an efficient market system in Canada, the Branch conducts policy-related applied industrial organization studies, both internally and under external contract. Internal studies occasionally take the form of research inquiries pursuant to section 47 of the Combines Investigation Act, which authorizes the Director to undertake studies of conditions or practices related to monopolistic situations or restraint of trade. Studies may be contracted out when collection of information does not involve powers provided in the Act; when recognized external expertise exists; when the project does not rely heavily on Bureau operational experience; and when internal resources cannot be deployed without disrupting existing Branch priorities.

2. Policy Evaluation and Development

(1) *Shipping Conferences Exemption Act, 1979*

Participation in the ongoing review of the Shipping Conferences Exemption Act, 1979 (SCEA), was an important activity during 1984-85. This legislation exempts ocean liner freight shipping conferences from provisions of the Combines Investigation Act. An interdepartmental review committee, chaired by Transport Canada, was established in response to a sunset clause in the SCEA, pursuant to which it was originally scheduled to expire on March 31, 1984. The SCEA has subsequently been extended by Orders in Council until March 31, 1986. Details of the Branch's previous involvement in this activity appear in the 1984 Annual Report at page 99.

On March 22, 1984, legislation to amend the SCEA, Bill S-12, was introduced in the Senate. The Bill contained provisions to encourage greater responsiveness by conferences to users and to strengthen the ability of the Canadian Transport Commission to protect the public interest. Bill S-12 was given second reading and underwent hearings by the Senate Committee on Banking, Trade and Commerce in May and June 1984, but died on the Order Paper when Parliament rose. The Branch has participated in interdepartmental discussions preparatory to the expected introduction of successor legislation to Bill S-12.

The Branch also participated in a meeting with the Consultative Shipping Group, an organization composed of representatives of Japan and several West European ship-owning countries, to discuss the impact of the expected SCEA amendments on international shipping relations.

(2) *Interdepartmental Committee on International Shipping Matters*

The Branch continued to participate in the work of the Interdepartmental Committee on International Shipping Matters. This standing committee, chaired by Transport Canada, meets regularly to consider and coordinate the Canadian position on developments in Canada's international maritime trade relations. In particular, the Branch participated in the Committee's consideration of the Canadian position on the General Shipping Policy Discussions being held in Paris under the auspices of the Maritime Transport Committee of the Organization for Economic Cooperation and Development (OECD). These Discussions are specifically concerned with the issue of competition policy in liner shipping and the application of national competition legislation to international maritime trade issues. In addition, the Director presented his views on these issues to the OECD Committee of Experts on Restrictive Business Practices when it reviewed the General Shipping Policy Discussions at its meetings in February 1985.

(3) *Section 41(4) of the Patent Act and Government Policy in the Pharmaceutical Industry*

Section 41(4) of the Patent Act provides for the issuance of compulsory licences for the manufacture or importation of patented pharmaceutical products in Canada, upon payment of a statutory royalty. Provision for compulsory licensing for the manufacture of drugs has existed in the Patent Act since 1923 and was broadened to provide authorization for importation of drugs under compulsory licence in 1969. The 1969 amendments were in response to the report of a House of Commons' Special Committee, which found that drug prices in Canada were among the highest in the industrial world, and that this situation was attributable to the lack of competition in the industry. The Committee relied extensively on a previous report by the Restrictive Trade Practices Commission on the industry, which in turn was prompted by a submission to the Commission by a previous Director of Investigation and Research, Mr. D.H.W. Henry, in 1961.

While the 1969 amendments stimulated competition and reduced drug prices, there has been concern over alleged adverse effects on employment and research and development in the industry. In 1984 the government appointed a Commission of Inquiry on the Pharmaceutical Industry (the Eastman Commission) to examine the impact of section 41(4), related aspects of government policy, and growth prospects in the industry generally.

The Director made a submission to the Commission on August 14, 1984. The submission contained an empirical analysis of the performance of the pharmaceutical industry in Canada. Based on information published by Statistics Canada, it concluded that the extension of compulsory licensing provisions in 1969 did not have a significant adverse impact on the levels of research and development, employment and growth in the industry. Indeed, since 1969 the rates of growth in employment and the value of sales in the pharmaceutical industry have generally exceeded the corresponding rates of growth for the Canadian manufacturing sector as a whole. Financial rates of return in the pharmaceutical industry have also generally exceeded corresponding rates for the manufacturing sector.

Since buying groups occupy an important position in the pharmaceutical industry, the submission addressed the status of these associations in relation to the Combines Investigation Act. The submission also commented on several apparent anti-competitive practices in the pharmaceutical industry, including predatory pricing and the use of fighting brands, and the status of these practices under the Act.

On October 17, 1984, the Director appeared before the Commission to give an oral statement and answer questions based on the written submission. The Director emphasized his concern that alleged anti-competitive practices were undermining the effectiveness of government policy in the industry. At the request of the Commission, the Director subsequently made a supplementary written submission extending and providing additional statistical information on the analysis of performance in the industry. The Commission reported its findings to the Minister of Consumer and Corporate Affairs in March 1985. The Commission's report is expected to be released to the public later in 1985.

(4) *Revisions to Canadian Copyright Law*

In the spring of 1984 the government released a White Paper on revision to the Canadian Copyright Act. Some of the proposals in the White Paper, particularly respecting an expanded role for copyright societies (collectives), raise potential issues under the Combines Investigation Act. The White Paper was referred for study and public hearings to a Subcommittee of the Parliamentary Standing Committee on Communications and Culture. The Branch undertook an evaluation of the interface between the Combines Investigation Act and the White Paper proposals, preparatory to a submission to the Subcommittee.

(5) *Regulation of Financial Markets*

Financial markets in Canada and elsewhere are undergoing rapid changes. Traditional boundaries that have separated the activities of banks, trust companies, insurance and securities dealers are being eroded by market forces, resulting in increased integration and substantial overlap in the services being provided by different types of financial institutions. These developments have challenged the objectives and effectiveness of the existing federal and provincial regulatory structures, which are based more in terms of the traditional segmentation of financial markets along institutional lines rather than on the nature of the services these institutions provide. It is important that in the various policy reviews currently underway, the efficiency and competition policy considerations be examined and taken into account.

In July 1984 the Director made a submission to the Ontario Securities Commission (OSC) in its policy review of the proliferation of non-voting common shares. That submission argued that there is no economic basis for banning restricted common shares because, given the available evidence on capital market efficiency, the market will effectively be able to price such shares according to the degree of restriction. In its final decision the OSC decided not to prohibit these shares.

The Branch has worked closely with the Regulated Sector Branch in preparing other submissions relating to financial markets and is continuing to monitor policy reform proposals emanating from industry participants and regulatory bodies to identify areas of competition policy concern.

(6) *Royal Commission on the Economic Union and Development Prospects for Canada (Macdonald Commission)*

In September the Director presented a submission to the Macdonald Commission in which he emphasized the importance of competition in stimulating economic efficiency and recommended increased reliance on market forces to achieve the objectives of growth and development. Identified as key areas were trade liberalization, a review of regulation and public ownership, opportunities for increased exports and modernization of existing competition laws. The submission also responded in detail to questions raised by the Commission on the immunity of both professional societies and Crown corporations from the Combines Investigation Act and on the effectiveness of the Director's right to intervene before regulatory boards.

(7) *Footwear Inquiry Intervention — the Canadian Import Tribunal (formerly the Anti-dumping Tribunal)*

On November 26, 1984, the Anti-dumping Tribunal (now the Canadian Import Tribunal) began hearing testimony regarding the effects of global import quotas on footwear. The Tribunal was instructed to examine the continued need for the quotas, first introduced in 1977. Among other factors, the Tribunal's mandate was to consider the impact of the quotas on consumers. If it found that imports caused or threatened serious injury to domestic producers, the Tribunal was directed to recommend a formula for phasing out quotas within a maximum of three years after their scheduled expiry in November 1985.

On November 29, 1984, the Director appeared before the Tribunal to present an Opening Statement in which he set out a framework for analysis of the effects of quotas and provided some preliminary conclusions regarding their inimical influence on competition and resource

allocation in the industry. The Director argued that the quotas had imposed a substantial net cost to Canada, particularly as a result of the burden placed on consumers, and that the quotas should not be extended. The Director presented his closing submission on January 15, 1985. The Tribunal was to report on its findings and recommendations in June 1985.

(8) *Legislation on Import Policy*

As reported in previous Annual Reports the Director made written and oral representations to the House of Commons Subcommittee on Import Policy that were primarily concerned with establishing a basis for considering competition policy and other public interest implications in antidumping and countervail inquiries. Subsequent to the Subcommittee's Report and consideration thereof by an interdepartmental committee, a provision was included in the new legislation on Import Policy to allow the Canadian Import Tribunal (formerly the Anti-dumping Tribunal) to receive and consider evidence with regard to public interest considerations and to recommend to the Minister of Finance that the full amount of a dumping or countervailing duty not be imposed if contrary to the public interest. With slight changes in wording, this provision was included in the legislation which, as Bill C-8, was introduced in January 1984. The Bill was subsequently passed in August and proclaimed in force in December 1984.

(9) *Export Agreements*

The Branch has prepared a statement clarifying the application of the Combines Investigation Act to export agreements. The intention is to ensure that export opportunities are not lost due to a false perception of the law. The Director intends to make a public statement during the year explaining how export agreements are exempted from the conspiracy provisions of the Act.

(10) *Cross-media Ownership*

The Branch, in consultation with the Department of Communications, has been conducting a review of the application by the Canadian Radio-television and Telecommunications Commission of the Governor in Council's Direction to the Commission prohibiting the issue and renewal of broadcasting licences to proprietors of daily newspapers in the same market area, except where refusal is against the public interest. The intention is to develop and evaluate options for maintaining, changing or repealing the Direction.

3. *International Relations*

The Branch acts as the focal point for the coordination and much of the execution of the Bureau's cooperation and liaison with foreign antitrust authorities on a bilateral basis and with international restrictive business practices organizations on a multilateral basis. The latter organizations include the OECD Committee of Experts on Restrictive Business Practices and the Intergovernmental Group of Experts on Restrictive Business Practices set up by the General Assembly under the auspices of the United Nations Conference on Trade and Development (UNCTAD).

(1) *Bilateral Relations*

The Bureau's bilateral relations are carried out generally within the framework of the 1979 OECD Council Recommendation concerning cooperation between member countries on restrictive business practices matters. In this respect consultations were held with the U.K. Office of Fair Trading and with the Directorate General for Competition of the Commission of the European Communities on matters relating to large international mergers and to the prosecution of alleged international cartel activities. However, given the magnitude and frequency of economic interaction between Canada and the United States, the bulk of the bilat-

eral work involves cooperation with the United States antitrust agencies. While influenced by the OECD Recommendation, this particular bilateral relationship is more specifically governed by the provisions of the March 1984 Memorandum of Understanding (MOU) as to Notification, Consultation and Cooperation with respect to the Application of National Antitrust Laws (the full text of which was reproduced as Appendix IX to the 1984 Annual Report).

During the initial year of operation under the MOU it became apparent that certain of its provisions could be clarified to improve the efficiency of the cooperative process it had established. Accordingly, in December 1984 officials from both countries met to consider how best to define and implement measures to clarify those provisions experience had shown to be unnecessarily cumbersome. The clarifications were being finalized at the end of the fiscal year.

Much of the substantive bilateral work conducted under the aegis of the MOU involves routine matters of notification and consultation about the antitrust activities of one jurisdiction that may affect the national interests of the other. However, less formalized inter-agency cooperation involving the exchange of information and views on enforcement strategies and tactics have produced material benefits in several areas, most notably in responding to deregulation and in pursuing merger analysis.

(2) Multilateral Relations

The Bureau has continued to be active in the work of the OECD Committee of Experts on Restrictive Business Practices (RBP) and in the deliberation of UNCTAD's Intergovernmental Group of Experts. The recent work of the OECD Committee has included the publication of two reports.

The first report, *Competition Policy and the Professions*, examines the relationship between the professions, particularly medicine, law and architecture, and competition policy in light of legal, economic and social implications. The second report, *Competition and Trade Policies: Their Interaction*, is the first phase of the study by the Working Party on Competition and Trade, chaired by the Director, and was described on page 101 of the 1984 Annual Report. The second phase of this study, relating to the institutional basis for consultation and cooperation on competition and trade policy issues, is expected to be completed and submitted for consideration to the OECD Council in 1986.

An important feature of the report on *Competition and Trade Policies* was an indicative check-list of factors that should be taken into account in considering the effects of particular trade measures. The OECD Committee on Consumer Policy subsequently developed a similar check-list, later reconciled with the RBP Committee's list and subject to consultation with the Trade Committee of the OECD.

The integrated list, reproduced with explanatory commentary as Appendix X, was transmitted to the OECD Council of Ministers in the spring of 1985 and endorsed with the recommendation that it should be seriously taken into account in the formulation of international trade policies. This check-list complements work of the OECD on the Costs and Benefits of Protection, which provides further substantial evidence that protection has yielded few, if any, benefits but has imposed very substantial costs, chiefly on the protecting country.

The Working Party on Competition and Trade initiated two other research projects during 1984. The first examines the interaction between competition and trade policies in the world market for automobiles, with special emphasis on the application of public voluntary export restraints to curtail international competition. The second, to be executed under contract, examines the material and serious injury standards used in the application of international trade measures of contingency protection (antidumping, countervailing, safeguard, and unfair competition laws) and compares these to the standards used in the application of predatory competition provisions of competition laws with the object of discerning the costs and benefits. It is proposed that these studies be complemented by others, effected cooperatively by the Bureau and the Antitrust Division of the United States Department of Justice, on protec-

tion and structural adjustment in Canada and the United States in selected industries. The object of this analysis would be to discern differences in the cost and benefit effects of trade measures given differences in the structural characteristics of the two economies. A feasibility study designed to explore alternative methodological approaches has been undertaken.

Participation in the UNCTAD Intergovernmental Group of Experts forum focuses on promoting a reasonably consistent international competition policy environment. Past work has involved directing and reviewing studies on the effects and control of particular restrictive business practices — namely, collusive tendering and tied sales — on international trade. Current work is focused on developing a model restrictive business practice law and examining the possibilities of improving the existing multilaterally agreed set of equitable principles for the control of anti-competitive business practices. The latter question will be examined in detail at a United Nations review conference to be held in November 1985.

4. Briefing Coordination

The Branch is responsible for coordinating the Bureau's participation in the government policy decision-making process. Through advance monitoring of government policy initiatives and provision of timely and consistent briefing materials to the Minister and Deputy Minister, it ensures that the competition policy implications of government policy initiatives are fully considered in the decision-making process, particularly by the Cabinet Committee on Economic and Regional Development. This responsibility entails monitoring the development of government policy initiatives, assessing their competition policy implications, identifying opportunities for effective and timely intervention in the policy process, coordinating the preparation of appropriate briefing materials, and regular reporting to the senior management of the Bureau of the briefing activities carried out by the Bureau and by the department. The briefing coordination function became fully operational in 1984-85.

5. Strategic Planning in the Bureau

Another activity of the Branch during 1984-85 was its staff function to the Bureau Management Committee in the development of the annual Strategic Plan. This involved providing analytical and research support to the Committee in its annual environmental assessment, reviewing the Bureau's mission and objectives, identifying strategic issues and establishing enforcement priorities. The Strategic Plan is intended to assist in allocating managerial and staff resources and to ensure that the Bureau responds effectively to changes in the external environment. The Plan formed the basis for the Bureau's input into the Departmental Strategic Overview.

6. Combines Investigation Act Enforcement Support

During the period under review the Branch continued to assist and support the enforcement activities of the Bureau. Such activity included analyses of specific fact situations pertaining to definition of relevant product markets, delivered pricing and horizontal mergers. Expertise developed in the Branch was also utilized in specific enforcement operations relating to liner shipping, the pharmaceutical industry and the administration of copyright law. In addition, Branch staff continued to work on projects related to the application of section 28 of the Act and levying of fines in combines cases. Further details on these projects are reported at page 103 of the 1984 Annual Report.

7. Policy-related Applied Industrial Organization Studies

In addition to the studies noted above, the Branch undertakes policy-related research tasks concerning Canadian industrial organization. The first five of the studies listed below were completed during the year.

(1) *The Determinants of Entry and Exit in Canadian Manufacturing Industries*

Two papers, one examining new plant entry and the other on plant mobility barriers, have been completed by a Branch staff member in collaboration with a university professor. The results of the analysis suggest that barriers to entry for new plants arise from economies of scale at the plant and firm level, from investments in advertising and from high capital requirements. High levels of concentration, tariffs and foreign ownership also appear to deter entry, while profitability, growth and market size encourage it. The impact of barriers to entry is found not to be symmetrical among different classes of entrants. Foreign and domestic established firms face no significant barriers, while "de novo" firms tend to confront significant barriers to mobility.

(2) *Vertical Restraints*

Two papers on recent developments in the competition policy treatment of resale price maintenance and tied selling were prepared by staff members of the Branch and published in the *Canadian Competition Policy Record*. The papers examined recent judicial decisions respecting these practices in the U.S. and Canada, as well as the economic rationales for these practices. In addition, a study on vertical restraints conducted by two academics and jointly sponsored by the Branch, the Macdonald Commission and the Business Council on National Issues has been completed. This study is expected to be published by the Commission as a background technical report.

(3) *Evolution of Market Structure and Competition in the Canadian Economy*

At the request of the Macdonald Commission, a Branch staff member has prepared a paper assessing the impact of various structural changes and government policy on the state of competition in the Canadian economy. The paper, to be published as a background technical report by the Commission, concludes that there has been increased competition in the Canadian economy. This is attributed to increased exposure to international trade, regulatory changes in the telecommunications, transport and financial sectors and amendments strengthening the Combines Investigation Act in 1976.

(4) *Crown Corporations*

Branch staff members presented a paper on Crown corporations at the Economic Council of Canada Symposium on Government Enterprise, Roles and Rationales held in Ottawa on September 24 and 25, 1984. The paper suggests that there is a need for greater precision in defining the mandate of Crown corporations, and that there is no justification for the unconditional immunity from competition law currently enjoyed by agent Crown corporations.

(5) *Comparison of Canadian and U.S. Shipping Conferences Legislation*

A comparative analysis of Canadian and U.S. shipping conferences legislative developments was prepared by the staff members of the Branch and published in the *Canadian Competition Policy Record* in June 1984. The legislative framework for operating shipping conferences in the United States was substantially revised by the Shipping Act of 1984. In Canada, Bill S-12, An Act to Amend the Shipping Conferences Exemption Act, 1979, introduced in the Senate in March 1984, was used as the basis for comparison with the U.S. Act. The paper concludes that both countries are moving toward greater reliance on competitive market forces in liner shipping.

(6) *Non-tariff Barriers in Canada-U.S. Trade*

Canada's exports and imports to and from the U.S. are increasingly affected by non-tariff barriers (NTBs), including safeguard measures, antidumping and countervailing duties as well as technical barriers to trade. The use of such measures by both countries has increased with the decline in tariff levels associated with successive rounds of GATT negotiations. Such measures can affect directly the state of competition in Canada, as well as the ability of firms to achieve scale economies by serving the Canadian and U.S. markets jointly.

As part of this work, a case study was undertaken on the impact of NTBs on Canada-U.S. trade in the steel industry. The study is expected to document the importance of Canada-U.S. trade for the structure of the Canadian steel industry. It will also assess the impact of specific NTBs on the industry.

(7) *Standards*

This study examines the competition policy implications of standards and standard setting practices and procedures used in Canada. The economic and pro-competitive advantages of standards, such as facilitating economies of scale, diffusion of technology and information flows, are generally recognized. However, standards can also be used by firms to entrench their relative market position and further private interests. During the period under review, the Branch had discussions with officials of five major standard development and writing organizations in Canada to obtain relevant information and solicit suggestions for strengthening the standard system to ensure it remains open, flexible and receptive to the demands of the marketplace.

(8) *Financial Markets*

In support of the Branch's policy evaluation and development function in the area of financial markets, two studies were initiated during the period under review.

The first, *U.S. Financial Sector Deregulation*, examines the factors leading to rearranging the regulation of financial markets, discusses recent regulatory changes and outlines possible future public policy approaches in the United States. Factors such as high and volatile rates of interest and inflation, and the availability of new technology altered the market constraints faced by financial institutions, whereas the regulatory constraints remained essentially unchanged. As a result, financial institutions have sought ways to overcome the increasing regulatory burden, mainly by developing new services or "re-packaging" existing ones. Often this practice has enabled institutions to effectively enter segments of the financial market not explicitly permitted by regulatory authorities. As a result substantial overlap has occurred among the services offered by different types of financial institutions. This has undermined the effectiveness of existing regulations, and to some extent led to a re-examination of their rationale. In light of similar developments in Canadian financial markets and the close links that exist between capital markets in Canada and the United States, the paper provides some insight into the domestic experience.

In progress is a second study, *Financial Innovation in Canada and the United States*, which examines and compares the introduction of new financial instruments/vehicles in the two countries. The study documents the extent and process of financial innovation that has occurred since the early 1970s, and attempts to shed light on the relative dynamic efficiency of the two financial systems in terms of the range, type and rate of innovation.

(9) *Mergers and the Market for Corporate Control*

During the period under review the Branch funded research on the effects of mergers on stock market valuation of "bidder" and "target" firms in the acquisition process. The analysis, based on a sample drawn from the Bureau's Merger Register, suggests that net gains are earned by shareholders of both the acquiring and acquired firm. In contrast, U.S. studies report shareholder gains for only the acquired firm. Further analysis is expected to show the extent to which the Canadian results are compatible with efficiency or market power hypotheses relating to mergers.

(10) Profitability Differences in Canadian Manufacturing Industries

The relationship between profits and structural factors — for example, concentration — has been extensively tested in the industrial organization literature. Debate continues over whether the positive association between profits and high concentration reflects greater efficiency of large firms or the exercise of market power. The Branch has funded a project examining inter- and intra-industry profitability differences in Canadian manufacturing. The preliminary results of the research, conducted by an academic, are expected to be presented at the Canadian Economics Association meetings to be held in May 1985.

(11) Government Ownership and Regulation of Airlines

Jointly with the Economic Council of Canada, the Branch is funding research on identifying and measuring the impact of government ownership and regulation on Canadian airline performance. The results will be relevant to the discussion of the role of government enterprise in the Canadian economy and the alternative policy instruments that could be used to achieve Canada's air transport goals.

APPENDIX I

Reports by RTPC and Action Taken Thereon*

Report	Nature of Inquiry	Date of Report	Recommendations	Names of Persons or Companies to which Recommendations Applied**	Actions Taken on Recommendations and Results***
Telecommunications in Canada—Phase I, Interconnection	General Inquiry under section 47 of Combines Investigation Act	September 10, 1981	The recommendations and conclusions of the RTPC are set out in the 1982 Annual Report at pages 92-95.	Bell Canada, British Columbia Telephone Company, CNCP Telecommunications and other telecommunications carriers.	To date the Director has filed the RTPC Report with the CRTC, the Alberta Public Utilities Board and the Ontario Telephone Service Commission, which have held public hearings into the matter of terminal attachment. The Director urged that these regulatory bodies accommodate, as part of their decisions on this issue, the principal recommendations of the RTPC.
Part II—The Proposed Reorganization of Bell Canada	General Inquiry under section 47 of the Combines Investigation Act	July 26, 1982	The RTPC recommended that the reorganization of the Bell Group of Companies should not proceed until there was full public consideration of the effects of the proposal on subscribers and the telecommunications industry.	Bell Canada and Northern Telecom Limited.	The Governor in Council directed the CRTC to review the proposed reorganization of Bell Canada, setting forth a number of possible effects that were to be examined in detail. The CRTC held public hearings on a variety of issues relating to the reorganization and its effects. The Director intervened and presented witnesses to address the issues of: (1) cross-subsidization within the Bell group, (2) statutory limitations in Bell Canada's Special Act, (3) structural separation from Bell Canada of various competitive activities, and (4) resource transfers within the Bell group.

APPENDIX I — (Continued)

Reports by RTPC and Action Taken Thereon*

					The CRTC issued its report on April 18, 1983, which recommended legislative action to correct possible problems affecting Bell's telephone subscribers. The legislative changes concerned: (1) production of documents from Bell and its affiliates relevant to the CRTC's mandate; (2) empowering the CRTC to order separate subsidiaries for competitive activities; (3) empowering the CRTC to order a minority shareholding in Bell Canada; (4) reconfirming Bell's sole role as a common carrier; and (5) prohibiting Bell and its group from holding a broadcasting licence. These recommendations reflected the principal submissions of the Director's intervention. Subsequent to the publication of the CRTC's report, the Minister of Communications announced that the Government had accepted the CRTC's recommendations and would act quickly to introduce the necessary legislation. Representatives of the Director, of the CRTC and of the Departments of Communications and Justice participated in the preparation of the proposed legislation. This legislation received First Reading on February 6, 1984, as part of Bill C-20 but died on the Order Paper. It was re-introduced on December 20, 1984, as Bill C-19. As of March 31, 1985, Bill C-19 was awaiting Second Reading.
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APPENDIX I — (Continued)

Reports by RTPC and Action Taken Thereon*

Part III—The Impact of Vertical Integration on the Equipment Industry.	General Inquiry under section 47 of the Combines Investigation Act	January 7, 1983	The recommendations are: (1) Northern should be required to continue to sell to Bell at prices no higher than those offered to other Canadian customers in order to protect competing Canadian suppliers from possible predatory pricing and to protect Bell subscribers, somewhat, against prices higher than those paid by other Canadian telephone companies; (2) The CRTC should require Bell and B.C. Tel to provide reports on prices of selected equipment that these companies pay to their affiliated suppliers and those that are available from other suppliers in Canada and the United States. The exact information required should be determined by the CRTC so that it can assure itself that the ownership links with equipment suppliers do not disadvantage subscribers; (3) B.C. Tel should continue its procurement through the competitive bidding process, and Bell should show itself more receptive to innovations developed in Canada by non-affiliated companies.	Bell Canada, Northern Telecom Limited and Bell Northern Research Ltd., British Columbia Telephone Company and AEL Microtel Limited	To date no action has been commenced.
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APPENDIX II

Proceedings Completed in Cases Referred Direct to the Attorney General of Canada

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Stereo components)	Harmon-Kardon of Canada Ltd., James B. Lansing Sound Canada Limited and E.S. Gould Marketing Co. Ltd.	Two charges under paragraph 38(1)(a) and two charges under paragraph 38(1)(b) were laid at Toronto, Ontario, on March 31, 1983. Harmon Kardon was jointly charged with E.S. Gould Marketing on two charges and James B. Lansing was jointly charged with E.S. Gould Marketing on the other two charges. On April 11, 1984, E.S. Gould Marketing Co. Ltd. pleaded guilty to one charge under each of paragraphs 38(1)(a) and 38(1)(b) and was convicted and fined \$15 000 on each charge for a total fine of \$30 000. The remaining charges against E.S. Gould and both charges against the other two accused were withdrawn. In addition, E.S. Gould Marketing Co. Ltd. pleaded guilty to breaching an Order of Prohibition issued in 1977 and was convicted and fined \$20 000.
Price maintenance (Furniture)	Meubles Daveluyville Ltée	One charge under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Hull, Québec, on December 4, 1981. Following the preliminary inquiry in May 1982 the accused was ordered to stand trial only on the charge under paragraph 38(1)(b). On April 11, 1984, the company pleaded guilty and was convicted and fined \$10 000.
Price maintenance (Audio-visual trade shows and products)	Hunter Nichols Publishing Limited and Sound Spectacular Inc.	One charge under paragraph 38(1)(a) was laid at Toronto, Ontario, on December 29, 1982. On October 26, 1983, both accused were discharged at the preliminary inquiry. A preferred indictment sought by the Crown was denied on April 30, 1984.
Price maintenance (Floor coverings)	Armstrong World Industries Canada Ltd. — Les Industries Mondiales Armstrong Canada Ltée and Beach Bros. Floor Coverings Ltd.	On October 3, 1983, at Edmonton, Alberta, one charge under paragraph 38(1)(b) was laid against Armstrong and one charge under subsection 38(6) was laid against Beach Bros. On April 16, 1984, and May 8, 1984, Armstrong and Beach Bros. respectively, were discharged at the preliminary inquiry.
Price maintenance (Stereo equipment)	Mission Electronics North American Corporation	Three charges under subsection 38(1) were laid at Toronto, Ontario, on December 9, 1982. On May 14, 1984, the company pleaded guilty to one charge and was convicted and fined \$5 000. The remaining charges were withdrawn.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Food service equipment)	Durable Equipment Limited and Cody-Food Equipment Ltd.	One charge under paragraph 38(1)(b) was laid at Toronto, Ontario, on March 2, 1983, against both companies. An additional charge under subsection 38(6) was laid against Cody-Food Equipment Ltd. On February 24, 1984, a stay of proceedings was entered in respect of the charge against Durable Equipment and on February 24, 1985, the stay was allowed to expire. On June 4, 1984, Cody-Food pleaded guilty to the charge under subsection 38(6) and on June 20, 1984, was convicted and fined \$9 000. The fine was ordered to be paid by Cassidy's Ltd., the sole shareholder of the dissolved company, Cody-Food. The charge under paragraph 38(1)(b) was dismissed. An Order of Prohibition was imposed on Cassidy's Ltd.
Price maintenance (Mattresses and box-springs)	Sealy (Western) Ltd., Seebee Investments (1966) Ltd.	One charge under paragraph 38(1)(a) and one charge under the former subsection 38(2) was laid at Edmonton, Alberta, on November 9, 1982, against Sealy (Western) Ltd. In addition, one charge under the former subsection 38(3) was laid against Seebee Investments (1966) Ltd. On July 19, 1983, a stay of proceedings was entered with respect to both companies and on July 19, 1984, the stay was allowed to expire.
Impeding an inquiry (Scrap metal)	Preussag Metal Inc.	One charge under subsection 41(1) was laid at Montréal, Québec. The trial commenced on December 2, 1983, and was scheduled to resume on April 26, 1984. On July 30, 1984, the information was dismissed.
Price maintenance (Musical instruments)	Great West Imports Ltd.	Two charges under paragraph 38(1)(b) were laid at Winnipeg, Manitoba, on November 23, 1983. On September 28, 1984, the company was convicted on one charge and fined \$1 000. The remaining charge was dismissed.
Price discrimination (Bedding, upholstered products and case goods)	Simmons Limited — Simmons Limitée	Two charges under paragraph 34(1)(a) were laid at Brampton, Ontario, on November 17, 1983. On October 15, 1984, the company pleaded guilty and was convicted and fined \$15 000 on each count for a total fine of \$30 000. An Order of Prohibition was issued.
Price maintenance (Bedding)	Simmons Limited — Simmons Limitée	Twenty-three charges under the present section 38 and its pre-1971 predecessor, section 34, were laid at Brampton, Ontario, on September 30, 1983. On October 15, 1984, the company pleaded guilty and was convicted on six charges under paragraph 38(1)(a) and one charge under paragraph 38(1)(b) of the present provisions, as well as one charge under the former paragraph 34(2)(b) and one charge under the former subparagraph 34(3)(b)(i).

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Maps and cartographical material)	Rolph-McNally Limited	The company was fined \$15 000 on the first charge and \$13 125 on the other eight charges for a total fine of \$120 000. The remaining charges were withdrawn. An Order of Prohibition was imposed. One charge under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto, Ontario, on March 31, 1981. On October 31, 1983, a stay of proceedings was entered and on October 31, 1984, the stay was allowed to expire.
Price maintenance (Skis)	Dave Downie Sales Agency Inc., Morley Pitcher and David Downie	One charge under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Vancouver, British Columbia, on October 11, 1983. On November 14, 1984, the accused were found guilty on the charge under paragraph 38(1)(a) and acquitted on the other charge. The company and Mr. Pitcher were convicted and fined \$5 000 and \$500, respectively. Mr. Downie was granted an absolute discharge.
Price maintenance (Gasoline)	Imperial Oil Limited	One charge under each of paragraphs 38(1)(a) and 38(1)(b) was laid at Toronto, Ontario, on February 25, 1982. On April 4, 1984, the company was convicted and on April 24, 1984, was fined \$75 000. The company filed a notice of appeal but in November 1984 the appeal was abandoned.
Price maintenance (Sportswear)	H.A. Imports of Canada Inc.	Two charges under paragraph 38(1)(a) and one charge under paragraph 38(1)(b) were laid at Toronto, Ontario, on February 10, 1983. On December 3, 1984, the company pleaded guilty to one charge under paragraph 38(1)(a) and was convicted and fined \$5 000. The remaining charges were dismissed.
Bid-rigging (Diesel generating units)	Geo. W. Crothers (1965) Limited and Kramer Tractor Ltd.	One charge under section 32.2 was laid at Toronto, Ontario, on March 22, 1983. On March 26, 1984, Geo. W. Crothers (1965) Limited pleaded guilty and was convicted and fined \$12 500. On March 29, 1984, Kramer Tractor Ltd. was convicted and fined \$20 000. Kramer Tractor Ltd. appealed the conviction and fine but abandoned the appeal in December 1984.
Price maintenance (Woodstoves)	Northwest Stoves Ltd. and Wayne Rourke	One charge under each of paragraphs 38(1)(a) and 38(1)(b) was laid at North Vancouver, British Columbia, on February 13, 1984. On January 18, 1985, Northwest Stoves Ltd. pleaded guilty to the charge under paragraph 38(1)(a) and was convicted and fined \$3 500. An Order of Prohibition was imposed. The remaining charge against the company and both charges against the individual were withdrawn.

APPENDIX II — (Continued)

Part I - Proceedings under sections 32 to 35 and section 38 of the Act

Nature of Inquiry	Names of Persons or Companies Proceeded Against	Action Taken and Results
Price maintenance (Art cards)	Canadian Art Prints Inc.	One charge under paragraph 38(1)(a) was laid at Ottawa, Ontario, on June 12, 1984. On January 25, 1985, the company was found guilty and convicted and fined \$3 000.
Combination (Outdoor advertising)	Mediacom Inc., Seaboard Advertising Co. Ltd. and HOAL Investments Ltd.	Charges were laid on April 2, 1981, under section 33 and paragraph 32(1)(c). On February 8, 1985, the charges were withdrawn and a new charge laid against the three accused under paragraph 32(1)(c). On February 11, 1985, the three companies pleaded guilty and were convicted and fined as follows: Mediacom Inc., \$400 000; Seaboard Advertising Co. Ltd., \$200 000; and HOAL Investments Ltd., \$100 000. The court also granted an Order of Prohibition.
Price maintenance (Jeans)	Esteban Designs Inc. and Mr. L. Clements	One charge under paragraph 38(1)(a) was laid at Ottawa, Ontario, on March 25, 1983, and a revised charge was laid on September 7, 1983. On February 15, 1984, a stay of proceedings was entered and on February 15, 1985, the stay was allowed to expire.
Price maintenance (Women's wear)	Mister Leonard Ltd. and Allan Rosenfeld Inc.	One charge under paragraph 38(1)(b) was laid at Montréal, Québec on January 4, 1985. On February 28, 1985, Allan Rosenfeld Inc. pleaded guilty and was convicted and fined \$10 000. The charge against Mister Leonard Ltd. was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Travel tours)	Snowbird Travel Ltd. (Nampa, Alberta)	One charge was laid on October 27, 1982, under paragraph 36(1)(a). On March 15, 1983, the charge was dismissed.
False or misleading representation in a material respect (Encyclopedias)	Webster Publishing Company Ltd. and George William Hoskins (Vancouver, British Columbia)	One charge was laid on May 30, 1983, under paragraph 36(1)(a). On March 18, 1984, the Information was quashed.
False or misleading representation in a material respect (Transmission repair)	Transmission Mario Inc. and Mario Labrecque (Montréal, Québec)	Four charges were laid on December 8, 1983, under paragraph 36(1)(a). On April 5, 1984, the corporate accused pleaded guilty to two charges and was fined \$500 on each charge, for a total fine of \$1 000. The remaining charges against the corporation and all charges against the individual accused were withdrawn.
Sale above advertised price (Drug store items)	Justin Maltais and Luc Maltais, carrying on business as Luc Maltais, Justin Maltais, Pharmaciens, and as Uniprix (Chicoutimi, Québec)	Ten charges were laid on March 23, 1981, under section 37.1. Luc Maltais pleaded guilty on April 6, 1984, and was convicted and fined \$150 on each charge, for a total fine of \$1 500. The charges against Justin Maltais were withdrawn.
False or misleading representation in a material respect (Motor parts distributorship)	Motorpart Industries Inc. (Moncton, New Brunswick)	Seven charges were laid on June 14, 1983, under paragraph 36(1)(a). On April 6, 1984, the charges were withdrawn.
Misleading price representation (Chairs)	Equipements de Bureau Jupiter Inc. (Montréal, Québec)	Three charges were laid on January 19, 1984, under paragraph 36(1)(d). On April 9, 1984, the accused pleaded guilty and was convicted and fined \$500 on each charge, for a total fine of \$1 500.
False or misleading representation in a material respect (Silver dollars)	First Pioneer Petroleum Limited and First Pioneer Investments Limited (Hamilton, Ontario)	One charge was laid on May 10, 1983, under paragraph 36(1)(a). On October 21, 1983, the Information was quashed and a new charge was laid on October 26, 1983. On April 13, 1984, the second Information was quashed.
Misleading price representation (Furniture and appliances)	Great Universal Stores of Canada Limited, carrying on business as Legaré Meubles (Québec, Québec)	Two charges were laid on January 26, 1982, under paragraph 36(1)(d). On April 13, 1984, the accused was acquitted.
False or misleading representation in a material respect (Microwave ovens)	The Consumers Gas Company Ltd. (Toronto, Ontario)	One charge was laid on September 14, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but on January 25, 1984, was convicted and on April 16, 1984, was fined \$1 000.
False or misleading representation in a material respect (Furniture)	Ikea Limited, McCann Erikson Advertising of Canada Ltd. and Bjorn Bayley (Vancouver, British Columbia)	Eight charges were laid on December 15, 1983, under paragraph 36(1)(a). On April 17, 1984, Ikea Limited pleaded guilty to six charges and was convicted and fined \$1 000 on each charge, for a total fine of \$6 000. McCann Erikson Advertising of Canada Ltd. pleaded guilty to six charges and was convicted and fined \$500 on each charge, for a total fine of \$3 000. All remaining charges were stayed.
Non-availability (Furniture)	Ikea Limited, (Vancouver, British Columbia)	One charge was laid on December 15, 1983, under section 37. On April 17, 1984, a stay of proceedings was entered.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Television and video equipment)	ABC Color and Sound Ltd. (Calgary, Alberta)	One charge was laid on November 18, 1983, under paragraph 36(1)(a). On April 25, 1984, a stay of proceedings was entered.
Misleading price representation (Television and video equipment)	ABC Color and Sound Ltd. (Calgary, Alberta)	Seven charges were laid on November 18, 1983, under paragraph 36(1)(d). On April 25, 1984, a stay of proceedings was entered.
False or misleading representation in a material respect (Ski boots)	André Lalonde Sports Inc. (Montréal, Québec)	Six charges were laid on September 6, 1983, under paragraph 36(1)(a). On April 30, 1984, the accused pleaded guilty and was convicted and fined \$1 500 on each charge, for a total fine of \$9 000.
False or misleading representation in a material respect (Furniture)	Nefco Furniture Ltd., carrying on business as The Penthouse Interiors (Winnipeg, Manitoba)	One charge was laid on February 10, 1984, under paragraph 36(1)(a). On April 30, 1984, the accused pleaded guilty and was convicted and fined \$500.
Representation without proper test (Energy-saving device)	D.W.S. Energy Ltd. (Winnipeg, Manitoba)	One charge was laid on June 30, 1983, under paragraph 36(1)(b). On May 1, 1984, the accused pleaded guilty and was convicted and fined \$500.
Representation without proper test (Air purifier)	Biotech Marketing Inc./Entreprise de Marketing Biotech Inc. (Ottawa, Ontario)	Two charges were laid on February 22, 1984, under paragraph 36(1)(b). On May 1, 1984, a stay of proceedings was entered.
Sale above advertised price (Grocery store items)	Les Aliments Cascades Inc. and Provigo (Distributions) Inc. (Montréal, Québec)	Ten charges were laid on February 8, 1984, under section 37.1. On May 1, 1984, Les Aliments Cascades Inc. pleaded guilty to three charges and was convicted and fined \$650 on each charge, for a total fine of \$1 950. The remaining charges against this accused and all charges against Provigo (Distributions) were withdrawn.
False or misleading representation in a material respect (Grocery store items)	Les Aliments Cascades Inc. and Provigo (Distributions) Inc. (Montréal, Québec)	Seven charges were laid on February 8, 1984, under paragraph 36(1)(a). On May 1, 1984, Les Aliments Cascades Inc. pleaded guilty and was convicted and fined \$650 on each charge, for a total fine of \$4 550. The charges against Provigo (Distributions) Inc. were withdrawn.
False or misleading representation in a material respect (Pattern-fitting clinic)	Bernard Oleyar and Blaise Oleyar, carrying on business as Mid-West Pattern Clinic Inc. (Winnipeg, Manitoba)	One charge was laid on September 15, 1982, under paragraph 36(1)(a). On May 11, 1984, Bernard Oleyar was acquitted and a stay of proceedings was entered against Blaise Oleyar.
Misleading price representation (Pattern-fitting clinic)	Bernard Oleyar and Blaise Oleyar, carrying on business as Mid-West Pattern Clinic Inc. (Winnipeg, Manitoba)	Two charges were laid on September 15, 1982, under paragraph 36(1)(d). On May 11, 1984, Bernard Oleyar was acquitted and a stay of proceedings was entered against Blaise Oleyar.
False or misleading representation in a material respect (Cellulite treatment)	Perma-Harvest Limited, Tulshi-Prosed Sen and Margaret Ann Reed (Toronto, Ontario)	Eight charges were laid on June 8, 1983, under paragraph 36(1)(a). On May 16, 1984, the corporate accused pleaded guilty to one charge and was convicted and fined \$1 000. The remaining charges against the corporate accused and all charges against the individuals were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Cellulite treatment)	Perma-Harvest Limited, Tulshi-Prosed Sen and Margaret Ann Reed (Toronto, Ontario)	Eight charges were laid on June 8, 1983, under paragraph 36(1)(b). On May 16, 1984, all charges were withdrawn.
False or misleading representation in a material respect (Dinnerware)	A-1 Auctioneers and Evaluation Services Ltd. and Charles D. Palk (Fredericton, New Brunswick)	Four charges were laid on November 8, 1983, under paragraph 36(1)(a). On May 22, 1984, all charges were dismissed.
Misleading price representation (Grocery store items)	Ferraro's Limited, carrying on business as Super Valu (Rossland, Nelson, Castlegar, Trail, British Columbia)	Four charges were laid on January 24, 1983, under paragraph 36(1)(d). On May 16, 1984, the accused was convicted on one charge and on May 24, 1984, was fined \$4 000. A stay of proceedings was entered with respect to the remaining charges.
False or misleading representation in a material respect (Grocery store items)	Ferraro's Limited, carrying on business as Super Valu (Rossland, Nelson, Castlegar, Trail, British Columbia)	Three charges were laid on January 24, 1983, under paragraph 36(1)(a). On May 16, 1984, the accused was convicted and on May 24, 1984, was fined \$500 on each charge, for a total fine of \$1 500.
Sale above advertised price (Drug store items)	Guy St. Onge, carrying on business as Pharmacie Jean Coutu and Farbec Inc. (Guy St. Onge) Enr. (Québec, Québec)	Fourteen charges were laid on March 31, 1981, under section 37.1. The corporate accused was charged solely with respect to 11 charges and the individual was charged solely with respect to three charges. The accused pleaded guilty and on March 2, 1984, were convicted. Guy St. Onge was fined \$100 on each of three charges and Farbec Inc. was fined \$100 on each of 11 charges, for a total fine of \$1 400. An appeal against sentence filed by the Crown was dismissed on May 25, 1984.
Sale above advertised price (Drug store items)	Florent Letourneau, carrying on business as Pharmacie de la Couronne Enr. and as Uniprix (Québec, Québec)	Eight charges were laid on March 17, 1981, under section 37.1. The accused pleaded guilty and on March 2, 1984, was convicted and fined \$40 on each charge, for a total fine of \$320. An appeal against sentence filed by the Crown was dismissed on May 25, 1984.
Sale above advertised price (Drug store items)	Centre D'Escomptes Racine Inc., carrying on business as Uniprix (Beauport, Québec)	Fifteen charges were laid on March 17, 1981, under section 37.1. The accused pleaded guilty and on March 2, 1984, was convicted and fined \$40 on each charge, for a total fine of \$600. An appeal against sentence filed by the Crown was dismissed on May 25, 1984.
Sale above advertised price (Drug store items)	Raymond Martel, carrying on business as Pharmacie Martel Enr., and as Uniprix (Loretteville, Québec)	Thirteen charges were laid on March 17, 1981, under section 37.1. The accused pleaded guilty and on March 2, 1984, was convicted and fined \$40 on each charge, for a total fine of \$520. An appeal against sentence filed by the Crown was dismissed on May 25, 1984.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Appliances)	Harold Grieve Jr., Allen Lastman, Maurice Bresgi, John Deyell, Stuart's Home Furnishing Franchise Inc., and Camco Inc., and Harold Grieve Jr. Enterprises Inc., Altarry Inc. and Ever'Rest Furniture Inc., carrying on business as Stuart's Furniture and Appliances (Toronto, Ontario)	One charge was laid on July 28, 1983, under paragraph 36(1)(a). On May 25, 1984, Harold Grieve Jr. Enterprises Inc., Altarry Inc. and Ever'Rest Furniture Inc. pleaded guilty and were convicted and fined \$33 000 each, for a total fine of \$99 000. The charge against the remaining accused was stayed.
False or misleading representation in a material respect (Appliances)	Harold Grieve Jr., Allen Lastman, Maurice Bresgi, John Deyell, Stuart's Home Furnishing Franchise Inc., and Camco Inc., and Harold Grieve Jr. Enterprises Inc., Altarry Inc. and Ever'Rest Furniture Inc., carrying on business as Stuart's Furniture and Appliances (Toronto, Ontario)	One charge was laid on December 19, 1983, under paragraph 36(1)(a). On May 25, 1984, the charge was withdrawn.
False or misleading representation in a material respect (Furniture)	Fernand Morissette Inc. (Orsainville, Ancienne Lorette, Québec)	Twenty-one charges were laid on March 10, 1983, under paragraph 36(1)(a). On May 25, 1984, the accused was convicted on 17 charges and fined \$1 200 on each charge, for a total fine of \$20 400. One charge was withdrawn and the remaining three charges were dismissed.
False or misleading representation in a material respect (Bust developer)	C.C.C.L. Canadian Consumer Company Limited and Allan Diamond (Montreal, Québec)	One charge was laid on May 5, 1980, under paragraph 36(1)(a). Both accused pleaded not guilty but were convicted on February 23, 1984. On May 24, 1984, the corporate accused was fined \$10 000 and A. Diamond was fined \$4 500. An appeal filed by the accused was withdrawn on May 29, 1984.
Representation without proper test (Bust developer)	C.C.C.L. Canadian Consumer Company Limited and Allan Diamond (Montreal, Québec)	One charge was laid on May 5, 1980, under paragraph 36(1)(b). Both accused pleaded not guilty but were convicted on February 23, 1984. On May 24, 1984, the corporate accused was fined \$10 000 and A. Diamond was fined \$4 500. An appeal filed by the accused was withdrawn on May 29, 1984.
False or misleading representation in a material respect (Kitchen remodelling)	Kenneth Nichols, Leslie Nichols and 296434 Alberta Limited, carrying on business as Re-Nu Cabinet (Edmonton, Alberta)	Four charges were laid on December 14, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but on May 31, 1984, were convicted on two charges. The corporate accused was fined \$500 on each charge and the individuals were fined \$250 on each charge, for a total fine of \$2 000. The remaining charges were dismissed.
Representation without proper test (Water purifier)	Donald McCallum and McSilben Consultants Inc., carrying on business as Pure Water Canada (Red Deer, Alberta)	One charge was laid on April 24, 1984, under paragraph 36(1)(b). On June 1, 1984, the charge was dismissed.
Pyramid selling scheme (Water purifier)	Donald McCallum and McSilben Consultants Inc., carrying on business as Pure Water Canada (Red Deer, Alberta)	One charge was laid on April 24, 1984, under section 36.3. On June 1, 1984, the charge was dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading price representation (Car stereo)	Deals on Wheels Car Stereo Limited and Leslie T. Sims (Vancouver, British Columbia)	Three charges were laid on September 10, 1982, under paragraph 36(1)(d). On June 1, 1984, a stay of proceedings was entered.
False or misleading representation in a material respect (Gas-saving device)	Jean Dion and Gaston Hébert (Sept-Îles, Québec)	One charge was laid on September 13, 1982, under paragraph 36(1)(a). On June 4, 1984, Jean Dion pleaded guilty and was convicted and fined \$1 000. The charge against Gaston Hébert was withdrawn.
Representation without proper test (Gas-saving device)	Jean Dion and Gaston Hébert (Sept-Îles, Québec)	One charge was laid on September 13, 1982, under paragraph 36(1)(b). On June 4, 1984, Jean Dion pleaded guilty and was convicted and fined \$1 000. The charge against Gaston Hébert was withdrawn.
Misleading testimonial or test (Gas-saving device)	Jean Dion and Gaston Hébert (Sept-Îles, Québec)	One charge was laid on September 13, 1982, under section 36.1. On June 4, 1984, Jean Dion pleaded guilty and was convicted and fined \$1 000. The charge against Gaston Hébert was withdrawn.
False or misleading representation in a material respect (Furniture)	B & L Furniture and Appliances (Kitchen) Limited, carrying on business as The Furniture Centre (Kitchener, Ontario)	Five charges were laid on June 21, 1983, under paragraph 36(1)(a). On January 27, 1984, the charges were dismissed. An appeal by the Crown was allowed and on June 7, 1984, the accused was convicted and fined \$100 on each charge, for a total fine of \$500.
False or misleading representation in a material respect (Oriental carpets)	Bokhara Carpet Palace Ltd. (Halifax, Nova Scotia)	Four charges were laid on May 11, 1984, under paragraph 36(1)(a). On June 11, 1984, the accused pleaded guilty to one charge and was convicted and fined \$1 500. The remaining charges were withdrawn.
False or misleading representation in a material respect (Carpets)	La Factorerie de Tapis D.B. Ltée/D.B. Carpet Factory Limited (St. Léonard, Québec)	Six charges were laid on November 2, 1981, under paragraph 36(1)(a). On June 12, 1984, the accused pleaded guilty and was convicted and fined \$500 on each charge, for a total fine of \$3 000.
False or misleading representation in a material respect (Commemorative coins)	Burke Direct Response Inc., Delta Direct Response Group Inc., Salomon Burke and Steven N. Burke (Toronto, Brampton, Ontario)	Five charges were laid on September 30, 1983, under paragraph 36(1)(a). On June 18, 1984, Delta Direct Response Group Inc. and Steven N. Burke pleaded guilty to one charge and were convicted and fined \$3 000 each, for a total fine of \$6 000. The remaining charges against those accused and all charges against the other accused were withdrawn.
False or misleading representation in a material respect (Coach tours)	Travelways Tours Limited (formerly Trailways of Canada Limited) (Markham, Ontario)	One charge was laid on June 7, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but on June 19, 1984, was convicted and fined \$3 500.
Representation without proper test (Suntanning studio)	G.V.D. Enterprises Limited, carrying on business as Jerry's UVA Suntanning (Winnipeg, Manitoba)	One charge was laid on November 1, 1983, under paragraph 36(1)(b). The accused pleaded not guilty but on June 25, 1984, was convicted and fined \$200. A prohibition order was imposed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Vacuum cleaners)	Hoover Canada Inc., (Toronto, Ontario)	Two charges were laid on July 22, 1983, under paragraph 36(1)(a). On January 27, 1984, the accused pleaded guilty to one charge and was convicted and fined \$500. The remaining charge was withdrawn. An appeal against sentence was filed by the Crown, and on June 25, 1984, the fine was increased to \$2 500.
False or misleading representation in a material respect (Vacuum cleaners)	Hoover Canada Inc., (Toronto, Ontario)	One charge was laid on July 22, 1983, under paragraph 36(1)(a). On January 27, 1984, the accused pleaded guilty and was convicted and fined \$500. An appeal against sentence was filed by the Crown, and on June 25, 1984, the fine was increased to \$2 500.
Pyramid selling scheme (Soap products)	Castle Marketing Inc. and Alvin James Luprypa (Winnipeg, Manitoba)	One charge was laid on May 18, 1983, under section 36.3. On October 21, 1983, the accused pleaded not guilty but were convicted. The corporate accused was fined \$10 000 and the individual was fined \$2 000, for a total fine of \$12 000. An appeal filed by the accused was dismissed on June 27, 1984.
Sale above advertised price (Grocery store items)	Marché G.P. Inc. (Rimouski, Québec)	Twenty-eight charges were laid on March 9, 1984, under section 37.1. The accused pleaded guilty to 17 charges and on June 27, 1984, was convicted and fined \$1 500 on 16 of the charges and \$1 000 on the other charge, for a total fine of \$25 000. The remaining charges were withdrawn.
False or misleading representation in a material respect (Houses)	Samuel Sarick Limited, Cannard Investments Limited, Collier & Park Advertising Ltd. and Murray Warsh Realty (1978) Limited (Toronto, Ontario)	Four charges were laid on October 23, 1981, under paragraph 36(1)(a). On September 16, 1982, Cannard Investments pleaded guilty to one charge and was convicted and fined \$1 500. All remaining charges against this accused and all charges against the remaining accused were withdrawn. On appeal by the Crown the fine was increased to \$5 000 on July 3, 1984.
False or misleading representation in a material respect (Video cassette recorders)	Al Utronki Appliance and T.V. Centre Limited (Renfrew, Ontario)	One charge was laid on March 29, 1984, under paragraph 36(1)(a). On July 9, 1984, the accused pleaded guilty and was convicted and fined \$600.
Misleading price representation (Video cassette recorders)	Al Utronki Appliance and T.V. Centre Limited (Renfrew, Ontario)	One charge was laid on March 29, 1984, under paragraph 36(1)(d). On July 9, 1984, the charge was withdrawn.
Representation without proper test (Water purifier)	J. Jeffrey Wood, carrying on a business as Aqua-Pura of Markham (Toronto, Ontario)	Four charges were laid on January 12, 1984, under paragraph 36(1)(b). The accused pleaded guilty to one charge and on July 11, 1984, was sentenced to a six-month term of probation. A prohibition order was also granted. The remaining charges were withdrawn.
False or misleading representation in a material respect (Fireplaces)	Edmonton Fresh Air Fireplaces Limited (Edmonton, Alberta)	One charge was laid on March 12, 1984, under paragraph 36(1)(a). On July 11, 1984, the charge was dismissed.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Promotional contest (Vacation homes)	Cranberry Timeshare Inc. and Allan Rose (Toronto, Ontario)	One charge was laid against each accused on March 30, 1984, under section 37.2. On July 18, 1984, the corporate accused pleaded guilty and was convicted and fined \$15 000. The charge against Allan Rose was withdrawn.
Misleading price representation (Radios)	Anand Daljit Kaur, carrying on business as La Cité Surplus Enr. (Montréal, Québec)	Two charges were laid on May 31, 1984, under paragraph 36(1)(d). On July 16, 1984, the accused pleaded guilty and was convicted and fined \$500 on each charge, for a total fine of \$1 000.
False or misleading representation in a material respect (Car covers)	O.E. McIntyre Limited, carrying on business as Carol Martin (Vancouver, British Columbia)	One charge was laid on January 25, 1984, under paragraph 36(1)(a). The accused pleaded not guilty but on July 17, 1984, was convicted and fined \$5 000.
False or misleading representation in a material respect (Water purifier)	Lorne Frederick Ward, carrying on business as Health-Glo Industries (Toronto, Ontario)	One charge was laid on May 30, 1984, under paragraph 36(1)(a). On July 27, 1984, the accused pleaded guilty and was convicted and fined \$500. The Court imposed a prohibition order, a restitution order, and a three-month term of probation.
Representation without proper test (Water purifier)	Lorne Frederick Ward, carrying on business as Health-Glo Industries (Toronto, Ontario)	One charge was laid on May 30, 1984, under paragraph 36(1)(b). On July 27, 1984, the accused pleaded guilty and was convicted and fined \$500. The Court imposed a prohibition order, a restitution order, and a three-month term of probation.
Non-availability (Telephone amplifiers)	Tandy Electronics Limited, carrying on business as Radio Shack (Montréal, Québec)	Two charges were laid on February 27, 1984, under subsection 37(2). On July 27, 1984, the accused was convicted and fined \$1 500 on each charge, for a total fine of \$3 000.
False or misleading representation in a material respect (Paint stripper)	O.E. McIntyre Ltd./Ltée. (Markham, Vanier, Ontario, and Laval, Québec)	Three charges were laid on November 29, 1983, under paragraph 36(1)(a). On August 2, 1984, the accused pleaded guilty to one charge and was convicted and fined \$7 000. The remaining charges were withdrawn.
Representation without proper test (Paint-stripper)	O.E. McIntyre Ltd./Ltée. (Markham, Vanier, Ontario, and Laval, Québec)	Three charges were laid on November 29, 1983, under paragraph 36(1)(b). On August 2, 1984, the charges were withdrawn.
False or misleading representation in a material respect (Mosquito repellent)	Jean-Eugène Bisson, carrying on business as Distribution JEB (Montréal, Québec)	Two charges were laid on April 24, 1984, under paragraph 36(1)(a). On August 21, 1984, the accused pleaded guilty to one charge and was convicted and fined \$750. The remaining charge was withdrawn.
Representation without proper test (Mosquito repellent)	Jean-Eugène Bisson, carrying on business as Distribution JEB (Montréal, Québec)	Two charges were laid on April 24, 1984, under paragraph 36(1)(b). On August 21, 1984, the charges were dismissed.
Misleading price representation (Office furniture)	Papeterie & Fournitures de Bureau Superior (1980) Ltée (Montréal, Québec)	Two charges were laid on June 8, 1984, under paragraph 36(1)(d). On August 28, 1984, the accused pleaded guilty and was convicted and fined \$1 000 on each charge for a total fine of \$2 000.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Office	Action Taken and Results
Misleading price representation (Office furniture)	Fournitures de Bureau Denis Inc. (Laval, Québec)	Four charges were laid on June 8, 1984, under paragraph 36(1)(d). On August 28, 1984, the accused pleaded guilty and was convicted and fined \$500 on each charge, for a total fine of \$2 000.
False or misleading representation in a material respect (Candy bars)	Lowney Inc. (Toronto, Ontario)	One charge was laid on September 26, 1983, under paragraph 36(1)(a). On August 30, 1984, the charge was withdrawn.
Representation without proper test (Weight loss clinic)	RAD Management Inc., carrying on business as Slim Tone Clinique (Winnipeg, Manitoba)	One charge was laid on December 1, 1983, under paragraph 36(1)(b). The accused pleaded not guilty but on September 6, 1984, was convicted and fined \$500.
False or misleading representation in a material respect (Cassette radios)	Nouveautés Capital Ltée/Capital Novelties Ltd. (Montréal, Québec)	Ten charges were laid on February 27, 1984, under paragraph 36(1)(a). On September 7, 1984, the accused pleaded guilty to three charges and was convicted and fined \$500 on each charge, for a total fine of \$1 500. The remaining charges were withdrawn.
Misleading price representation (Cassette radios)	Nouveautés Capital Ltée/Capital Novelties Ltd. (Montréal, Québec)	Ten charges were laid on February 27, 1984, under paragraph 36(1)(d). On September 7, 1984, the accused pleaded guilty to two charges and was convicted and fined \$500 on each charge, for a total fine of \$1 000. The remaining charges were withdrawn.
False or misleading representation in a material respect (Employment opportunity)	Atlas Driving School Limited and Robert Maurice (Kitchener, London, Ontario)	Two charges were laid on August 19, 1983, under paragraph 36(1)(a). On September 9, 1984, the accused pleaded guilty to one charge and were convicted. R. Maurice was fined \$10 000 and the company was fined \$5 000, for a total fine of \$15 000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Health club memberships)	Shape-Up Productions Ltd., carrying on business as Shape-Up Fitness Centre (Saint John, New Brunswick)	One charge was laid on August 3, 1984, under paragraph 36(1)(a). On September 12, 1984, the accused pleaded guilty and was convicted and fined \$50.
Sale above advertised price (Grocery store items)	Dominion Stores Limited — Les Supermarchés Dominion Ltée (St-Foy, Québec)	Seventeen charges were laid on March 17, 1981, under section 37.1. On August 31, 1984, the accused pleaded guilty and was convicted. On September 13, 1984, the accused was fined \$2 000 on each charge, for a total fine of \$34 000.
False or misleading representation in a material respect (Gasoline additive)	WREM Marketing Inc. (Windsor, Ontario)	One charge was laid on February 7, 1983, under paragraph 36(1)(a). On September 19, 1984, the accused pleaded guilty and was convicted and fined \$1 000.
Representation without proper test (Gasoline additive)	WREM Marketing Inc. (Windsor, Ontario)	Fourteen charges were laid on February 7, 1983, under paragraph 36(1)(b). On September 19, 1984, the accused pleaded guilty and was convicted and fined \$1 000 on each charge, for a total fine of \$14 000.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Frozen foods)	The Epac Group Inc. and William Muscy, carrying on business as Eatrite Food Packers Ltd. (Gillam, Manitoba)	One charge was laid on June 18, 1984, under paragraph 36(1)(a). On September 17, 1984, W. Muscy pleaded guilty and was convicted and fined \$700. A stay of proceedings was entered with respect to the charge against the company.
Promotional contest (Candy bars)	Lowney Inc. (Toronto, Ontario)	Four charges were laid on September 26, 1983, under section 37.2. On August 30, 1984, the accused pleaded guilty to two charges and was convicted and on September 20, 1984, was fined \$35 000 on each charge, for a total fine of \$70 000. The remaining charges were withdrawn.
False or misleading representation in a material respect (Hardware items)	Westfair Foods Ltd., carrying on business as Super Valu (Winnipeg, Manitoba)	Nine charges were laid on May 27, 1983, under paragraph 36(1)(a). The accused was convicted on September 7, 1984, and on September 20, 1984, was fined \$300. The remaining charges were withdrawn.
False or misleading representation in a material respect (Fabrics)	Young Equities Ltd., carrying on business as Fashion Fabric Centre (Edmonton, Alberta)	One charge was laid on February 9, 1984, under paragraph 36(1)(a). On September 24, 1984, the accused pleaded not guilty but was convicted and fined \$1 000.
Misleading price representation (Massagers)	K.B.M. Electropedic Adjustable Beds Ltd., carrying on business as Electropedic Products (Calgary, Alberta)	One charge was laid on February 6, 1981, under paragraph 36(1)(d). On July 10, 1981, the charge was dismissed. The Crown appealed the dismissal, but on September 21, 1983, the appeal was denied. A further appeal by the Crown was abandoned on September 24, 1984.
False or misleading representation in a material respect (Massagers)	K.B.M. Electropedic Adjustable Beds Ltd., carrying on business as Electropedic Products (Calgary, Alberta)	One charge was laid on April 29, 1981, under paragraph 36(1)(a). The accused pleaded not guilty but on July 10, 1981, was convicted and fined \$2 500. The accused appealed the conviction and on September 21, 1983, the appeal was allowed. A further appeal by the Crown was abandoned on September 24, 1984.
False or misleading representation in a material respect (Hypnosis treatments)	Daniel John Rutley, carrying on business as D. Rutley & Associates (North Vancouver, West Vancouver, British Columbia)	One charge was laid on August 24, 1984, under paragraph 36(1)(a). On September 24, 1984, the accused pleaded guilty and was convicted and fined \$350.
Misleading testimonial or test (Hypnosis treatment)	Daniel John Rutley, carrying on business as D. Rutley & Associates (North Vancouver, West Vancouver, British Columbia)	One charge was laid on August 24, 1984, under section 36.1. On September 24, 1984, a stay of proceedings was entered.
False or misleading representation in a material respect (Clothing)	Simpsons Limited (Montréal, Québec)	Two charges were laid on April 24, 1984, under paragraph 36(1)(a). On September 26, 1984, the charges were withdrawn.
False or misleading representation in a material respect (Automobiles)	Heritage Ford Sales Limited (Toronto, Ontario)	Two charges were laid on February 27, 1984, under paragraph 36(1)(a). On October 5, 1984, the accused pleaded not guilty but was convicted and fined \$2 000 on each charge, for a total fine of \$4 000.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading price representation (Radios)	Mohamed Sabiq, carrying on business as Le Soleil Electronique Ltée (Montréal, Québec)	One charge was laid on May 31, 1984, under paragraph 36(1)(d). On July 16, 1984, the charge was withdrawn. A new charge was laid on August 13, 1984, and on October 9, 1984, the accused pleaded guilty and was convicted and fined \$500.
False or misleading representation in a material respect (Business opportunity)	John W. Martin, carrying on business as Purple Martin Holdings (Calgary, Alberta)	One charge was laid on February 24, 1984, under paragraph 36(1)(a). On May 15, 1984, the accused pleaded not guilty but was convicted and fined \$2 500. On appeal by the accused the fine was reduced to \$500 on October 12, 1984.
False or misleading representation in a material respect (Contact lenses)	Hakim Optical Laboratory Limited, carrying on business as Hakim Optical Factory Outlet (Halifax, Nova Scotia)	Three charges were laid on April 30, 1984, under paragraph 36(1)(a). The accused pleaded guilty to one charge and on October 17, 1984, was convicted and fined \$1 200. The remaining charges were withdrawn.
Misleading price representation (Hardware items)	Maxicom Liquidation Inc. (Regina, Saskatchewan)	One charge was laid on October 17, 1984, under paragraph 36(1)(d). On October 17, 1984, the accused pleaded guilty and was convicted and fined \$250.
Misleading price representation (Hardware items)	Maxicom Liquidation Inc. (Regina, Saskatchewan)	One charge was laid on September 10, 1984, under paragraph 36(1)(d). On October 17, 1984, the charge was withdrawn and a new charge was laid. The accused pleaded guilty and was convicted and fined \$250.
False or misleading representation in a material respect (Venetian blinds)	Lycor Import Export Ltée (Dorval, Québec)	One charge was laid on January 23, 1984, under paragraph 36(1)(a). On October 22, 1984, the accused pleaded guilty and was convicted and fined \$2 250.
Misleading price representation (Furniture)	Equipement de Bureau R.C. Samson Inc. (Montréal, Québec)	One charge was laid on June 8, 1984, under paragraph 36(1)(d). On October 23, 1984, the accused pleaded guilty and was convicted and fined \$500.
Misleading price representation (Sewing machines)	Les Investissements SETMR II Inc. (Montréal, Québec)	Ten charges were laid on August 10, 1984, under paragraph 36(1)(d). On October 29, 1984, the accused pleaded guilty and was convicted and fined \$800 on each charge, for a total fine of \$8 000.
False or misleading representation in a material respect (Pianos)	Kenham Limited, carrying on business as Baldwin Piano & Organ Studios (Toronto, Ontario)	One charge was laid on August 28, 1984, under paragraph 36(1)(a). On October 31, 1984, the accused pleaded guilty and was convicted and fined \$1 500.
Misleading price representation (Pianos)	Kenham Limited, carrying on business as Baldwin Piano & Organ Studios (Toronto, Ontario)	One charge was laid on August 28, 1984, under paragraph 36(1)(d). On October 31, 1984, the charge was withdrawn.
Misleading price representation (Fur coats)	Vogue Furriers Limited (St. John's, Newfoundland)	One charge was laid on August 21, 1984, under paragraph 36(1)(d). On November 2, 1984, the accused pleaded guilty and was convicted and fined \$500.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Drug store items)	Jean Coutu, carrying on business as Pharmacies Escompte Jean Coutu Enr. and Pharmacies Jean Coutu Enr. (Répertigny, Québec)	Twenty-two charges were laid on November 27, 1984, under section 37.1. On November 6, 1984, the accused pleaded not guilty but was convicted on 21 charges and fined \$1 000 on each charge, for a total fine of \$21 000. The remaining charge was dismissed.
False or misleading representation in a material respect (Jewellery)	Inch of Gold Distributors B.C. Ltd., Gregory Hubert Stevenson and Steven William Zagozewski (Vancouver, Victoria, British Columbia)	Three charges were laid on December 6, 1983, under paragraph 36(1)(a). The corporate accused was charged solely with respect to one charge. The individuals were charged jointly with respect to one charge and G.H. Stevenson was also charged solely with respect to one charge. The corporate accused pleaded guilty and was convicted on October 29, 1984, and on November 7, 1984, was fined \$1 500. The charges against the individuals were stayed.
False or misleading representation in a material respect (Distributorships)	C.H. Thomas Importers Incorporated and Doug Crabbe (Moncton, New Brunswick)	One charge was laid on January 5, 1984, under paragraph 36(1)(a). On November 8, 1984, the accused pleaded guilty and were convicted and fined \$500 each, for a total fine of \$1 000.
False or misleading representation in a material respect (Furniture)	Best Deal Factory Furniture Sales Limited and Joe Capone (Toronto, Ontario)	Five charges were laid on March 1, 1984, under paragraph 36(1)(a). On November 15, 1984, the corporate accused pleaded guilty to one charge and was convicted and fined \$750. A prohibition order was granted. The remaining charges against the company and all charges against the individual were withdrawn.
Promotional contest (Wedding apparel)	Stanley Kopman, Mark Orland, Samuel Stupp and 517427 Ontario Ltd., carrying on business as House of Weddings, Alan's Tuxedo City, Bridals by the House of Weddings and the Canadian Wedding Merchants Association (Toronto, Ontario)	One charge was laid on June 18, 1984, under section 37.2. On November 19, 1984, Stanley Kopman pleaded guilty and was convicted and fined \$8 000. The charge against the three remaining accused was withdrawn.
False or misleading representation in a material respect (Wedding apparel)	Stanley Kopman, Mark Orland, Samuel Stupp and 517427 Ontario Ltd., carrying on business as House of Weddings, Alan's Tuxedo City, Bridals by the House of Weddings and the Canadian Wedding Merchants Association (Toronto, Ontario)	One charge was laid on June 18, 1984, under paragraph 36(1)(a). On November 19, 1984, the charge was withdrawn.
False or misleading representation in a material respect (Chimney cleaner)	Webster Industries Ltd. and Gerald D. Webster (Ottawa, Ontario)	One charge was laid on July 5, 1983, under paragraph 36(1)(a), but was withdrawn on January 24, 1984. One charge was laid on December 29, 1983, and on November 20, 1984, Webster Industries Ltd. pleaded guilty and was convicted and fined \$250. A prohibition order was granted. The charge against Gerald D. Webster was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Representation without proper test (Chimney cleaner)	Webster Industries Ltd. and Gerald D. Webster (Ottawa, Ontario)	One charge was laid on July 5, 1983, under paragraph 36(1)(b) but was withdrawn on January 24, 1984. One charge was laid on December 29, 1983, and on November 20, 1984, Webster Industries Ltd. pleaded guilty and was convicted and fined \$250. A prohibition order was granted. The charge against Gerald D. Webster was withdrawn.
False or misleading representation in a material respect (Scissors)	Aurora Catalogue Associates Limited (Nationwide)	Eleven charges were laid on October 4, 1984, under paragraph 36(1)(a). On November 20, 1984, the accused pleaded guilty to one charge and was convicted and fined \$9 000. The remaining charges were withdrawn.
Misleading price representation (Hardware items)	Promo Variety Liquidation Inc. (St. John's, Newfoundland)	One charge was laid on August 6, 1984, under paragraph 36(1)(d). On November 20, 1984, the accused pleaded guilty and was convicted and fined \$1 000.
Promotional contest (Vacuum cleaners)	258853 British Columbia Limited, carrying on business as City Distributing and Marketing and as Compact/Tri-Star Home Care Products (Vancouver, British Columbia)	One charge was laid on July 6, 1984, under section 37.2. On November 22, 1984, the accused pleaded not guilty but was convicted and fined \$300.
Representation without proper test (Engine additive)	Petro-Lon Canada Limited (Edmonton, Alberta)	One charge was laid on December 7, 1981, under paragraph 36(1)(b). On November 27, 1984, the accused pleaded guilty and was convicted and fined \$1 500. A prohibition order was also granted.
False or misleading representation in a material respect (Houses)	Re Max Real Estate Limited and Randy Mayoh (St. Albert, Alberta)	One charge was laid on June 12, 1984, under paragraph 36(1)(a). On November 26, 1984, the accused were acquitted.
False or misleading representation in a material respect (Pianos and organs)	Roy & Bilodeau Inc. (Montréal, Québec)	Two charges were laid on January 13, 1983, under paragraph 36(1)(a). On November 29, 1984, the accused pleaded guilty and was convicted and fined \$750 on the first charge and \$500 on the second, for a total fine of \$1 250.
Misleading price representation (Jewellery)	Silver's Jewellery Limited (St. John's Newfoundland)	One charge was laid on August 6, 1984, under paragraph 36(1)(d). The accused pleaded not guilty but on November 30, 1984, was convicted and fined \$1 000.
False or misleading representation in a material respect (Television sets and converters)	Danforth Radio Company Limited and 1/2 Price Video/Audio Wholesale Distributors Ltd. (Toronto, Markham, Ontario)	Seven charges were laid on March 30, 1984, under paragraph 36(1)(a). On December 3, 1984, Danforth Radio Company Limited pleaded guilty to two charges and was convicted and fined \$4 000 on each charge, for a total fine of \$8 000. The remaining charges against Danforth and all charges against the other accused were withdrawn.
Sale above advertised price (Television sets and converters)	Danforth Radio Company Limited and 1/2 Price Video/Audio Wholesale Distributors Ltd. (Toronto, Markham, Ontario)	Two charges were laid on March 30, 1984, under section 37.1. On December 3, 1984, Danforth Radio Company Limited pleaded guilty to one charge and was convicted and fined \$4 000. The remaining charge against Danforth and both charges against the other accused were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (mattresses)	Brault & Martineau Inc., (Longueuil, Québec)	Two charges were laid on April 9, 1984, under paragraph 36(1)(a). On December 7, 1984, the accused pleaded guilty and was convicted and fined \$500 on each charge, for a total fine of \$1 000.
Sale above advertised price (Health care items)	Jean Coutu, carrying on business as Pharmacie Jean Coutu Enr. (Granby, Québec)	Twelve charges were laid on March 19, 1982, under section 37.1. The accused pleaded guilty and on December 13, 1984, was convicted and fined \$400 on each charge, for a total fine of \$4 800.
Misleading testimonial or test (Books)	The Toronto Sun Publishing Corporation, carrying on business as the Edmonton Sun (Edmonton, Alberta)	Twelve charges were laid on August 30, 1984, under section 36.1. On December 17, 1984, the accused pleaded guilty to four charges and was convicted and fined \$250 on each charge, for a total fine of \$1 000. The remaining charges were withdrawn.
Misleading price representation (Jewellery)	K-Mart Canada Limited (St. John's, Newfoundland)	One charge was laid on August 6, 1984, under paragraph 36(1)(d). On December 17, 1984, the accused pleaded guilty and was convicted and fined \$2 000.
Sale above advertised price (Health care items)	Les Entreprises Pierre Deschênes Inc., carrying on business as Pharm-Escomptes Jean Coutu (Jonquière, Québec)	Twenty-two charges were laid on March 23, 1981, under section 37.1. On December 17, 1984, the accused pleaded guilty and was convicted and fined \$150 on each charge, for a total fine of \$3 300.
Representation without proper test (Windows)	Western Magnetite Industries Ltd., (Winnipeg, Manitoba)	Two charges were laid on May 7, 1984, under paragraph 36(1)(b). On December 19, 1984, a stay of proceedings was entered.
Misleading price representation (Waterbeds)	Clear View Home Furnishings Ltd., (Saint John, New Brunswick)	One charge was laid on August 3, 1984, under paragraph 36(1)(d). On December 20, 1984, the accused was acquitted.
Representation without proper test (Gas-saving device)	Donald J. Graydon, carrying on business as Dee-Em Products (Tillsonburg, Ontario)	One charge was laid on September 17, 1982, under paragraph 36(1)(b). On July 21, 1983, the accused pleaded not guilty but was convicted and fined \$50. The accused appealed the conviction and on December 31, 1984, the appeal was allowed and the conviction quashed.
Representation without proper test (Gas-saving device)	Kenneth Graydon and Fuel-O-Matic Manufacturing (Eastern) Limited, carrying on business as Fuel-O-Matic Manufacturing Limited (Tillsonburg, Ontario)	One charge was laid on September 17, 1982, under paragraph 36(1)(b). The accused pleaded not guilty but were convicted and on July 21, 1983, the corporate accused was fined \$250, and the individual was fined \$50. The accused appealed the convictions, and on December 31, 1984, the appeal was allowed and the convictions quashed.
Non-availability (Hardware Items)	Roger Goulet Inc. (Joliette, Québec)	One charge was laid on December 10, 1984, under subsection 37(2). On January 7, 1985, the accused pleaded guilty and was convicted and fined \$200.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (New homes)	The Douglas MacDonald Development Corporation, carrying on business as MacDonald Homes (Nepean, Ontario)	Twenty charges were laid on November 24, 1983, under paragraph 36(1)(a). On January 9, 1985, the accused pleaded guilty to two charges and was convicted and fined \$5 000 on each charge, for a total fine of \$10 000. The remaining charges were withdrawn.
Misleading price representation (New homes)	The Douglas MacDonald Development Corporation, carrying on business as MacDonald Homes (Nepean, Ontario)	Three charges were laid on November 24, 1983, under paragraph 36(1)(d). On January 9, 1985, the charges were withdrawn.
False or misleading representation in a material respect (Homes)	A.E. Lepage Limited, James Ernest Thomson, Gloria Susan Thomson and Leslie Pope (Edmonton, Alberta)	One charge was laid on August 30, 1984, under paragraph 36(1)(a). On January 10, 1985, the company pleaded guilty and was convicted and fined \$1 500. The charge against L. Pope was withdrawn and those against the other two accused were dismissed.
False or misleading representation in a material respect (Quartz stones)	Ragnar Jewellers Ltd., carrying on business as Ragnar's and Ragnar Bertelsen (Vancouver, Richmond, British Columbia)	Five charges were laid on March 9, 1984, under paragraph 36(1)(a). The accused pleaded not guilty but on November 21, 1984, R. Bertelsen was convicted on three charges and fined \$500. All remaining charges against the individual and all charges against the company were stayed. An appeal against the conviction was abandoned on January 11, 1985.
Pyramid selling scheme (Cleaning products)	Barry Luprypa (Edmonton, Alberta)	One charge was laid on December 29, 1983, under section 36.3. On January 14, 1985, the charge was dismissed.
Sale above advertised price (Drug store items)	René Brault, Laurent Trudeau and Distributions Brault & Trudeau Inc., carrying on business as Pharmacie Jean Coutu (R. Brault L. Trudeau) Enr. (Ste. Agathe, St. Jovite, Québec)	Twelve charges were laid on December 8, 1981, under section 37.1. On January 15, 1985, the corporate accused pleaded guilty and was convicted and fined \$400 on each charge, for a total fine of \$4 800. The charges against the individuals were withdrawn.
Sale above advertised price (Drug store items)	Jean Coutu and Louis Michaud, carrying on business as Pharmacie Jean Coutu (St-Jérôme) Enr. (St. Jérôme, Québec)	Nineteen charges were laid on December 8, 1981, under section 37.1. On January 15, 1985, Jean Coutu pleaded guilty and was convicted and fined \$400 on each charge, for a total fine of \$7 600. All charges against Louis Michaud were withdrawn.
False or misleading representation in a material respect (Mattresses)	North Park Furniture Limited, carrying on business as North Park Distributors (Toronto, Ontario)	Eleven charges were laid on September 20, 1984, under paragraph 36(1)(a). On January 15, 1985, the charges were withdrawn.
Non-availability (Mattresses)	North Park Furniture Limited, carrying on business as North Park Distributors (Toronto, Ontario)	Five charges were laid on September 20, 1984, under subsection 37(2). On January 15, 1985, the accused pleaded guilty to one charge and was convicted and fined \$10 000. The remaining charges were withdrawn.
Sale above advertised price (Mattresses)	North Park Furniture Limited, carrying on business as North Park Distributors (Toronto, Ontario)	One charge was laid on September 20, 1984, under section 37.1. On January 15, 1985, the charge was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Shopping service)	Comp-U-Card of Canada Inc. (Ottawa, Ontario)	Five charges were laid on October 30, 1984, under paragraph 36(1)(a). On January 15, 1985, the accused pleaded guilty to three charges and was convicted and fined \$10 000. The remaining charges were withdrawn and a prohibition order was imposed.
Misleading price representation (Shopping service)	Comp-U-Card of Canada Inc. (Ottawa, Ontario)	Four charges were laid on October 30, 1984, under paragraph 36(1)(d). On January 15, 1985, the charges were withdrawn.
False or misleading representation in a material respect (Fur coats)	P.J. Investments Ltd. and James P. Dyck (Saskatoon, Saskatchewan)	Two charges were laid on May 22, 1984, under paragraph 36(1)(a) against P.J. Investments Ltd. Two further charges were laid on June 1, 1984, against James P. Dyck. On September 26, 1984, the charges against both accused were dismissed. An appeal was filed by the Crown, but on January 16, 1985, the appeal was dismissed.
Misleading price representation (Drapes)	The Drapery Shoppe (1965) Limited (Brandon, Manitoba)	Five charges were laid on October 25, 1984, under paragraph 36(1)(d). On January 16, 1985, a stay of proceedings was entered.
False or misleading representation in a material respect (Novelty items)	San Francisco Gifts Ltd. (Edmonton, Alberta)	One charge was laid on September 10, 1984, under paragraph 36(1)(a). The accused pleaded not guilty, but on January 18, 1985, was convicted and fined \$1 500.
Misleading testimonial or test (Beds)	Slumber Magic Adjustable Bed Co. Ltd. (Comox, British Columbia)	Three charges were laid on January 8, 1985, under section 36.1. On January 18, 1985, the accused pleaded guilty to two charges and was convicted and fined \$400. The remaining charge was withdrawn.
False or misleading representation in a material respect (Beds)	Slumber Magic Adjustable Bed Co. Ltd. (Comox, British Columbia)	Three charges were laid on January 8, 1985, under paragraph 36(1)(a). On January 18, 1985, a stay of proceedings was entered.
False or misleading representation in a material respect (Floppy disks)	Timothy Steven Tarter, carrying on business as TDS Computer Solutions Ltd. (Vancouver, British Columbia)	One charge was laid on November 30, 1984, under paragraph 36(1)(a). On January 18, 1985, the charge was dismissed.
Misleading price representation (Floppy disks)	Timothy Steven Tarter, carrying on business as TDS Computer Solutions Ltd. (Vancouver, British Columbia)	One charge was laid on November 30, 1984, under paragraph 36(1)(d). On January 18, 1985, the charge was dismissed.
Sale above advertised price (Drug store items)	Francois Traversy, carrying on business as Pharmacie Jean Coutu (F. Traversy) Enr. (Verdun, Québec)	Five charges were laid on November 27, 1981, under section 37.1. On January 22, 1985, the accused pleaded guilty and was convicted and fined \$650 on each charge, for a total fine of \$3 250.
Sale above advertised price (Drug store items)	Jean Paul Duquet, carrying on business as Pharmacie Jean Coutu (J.P. Duquet) Enr. and as Pharmont Ltée. (Montréal, Québec)	Twenty-two charges were laid on November 27, 1981, under section 37.1. On January 22, 1985, the accused pleaded guilty and was convicted and fined \$650 on each charge, for a total fine of \$14 300.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Sale above advertised price (Drug store items)	Gilles Raymond, carrying on business as Pharmacie Jean Coutu (G. Raymond) Enr. and Pharmacie Jean Coutu (Dorion) Enr. (Dorion, Valleyfield, Québec)	Seventeen charges were laid on November 27, 1981, under section 37.1. On January 22, 1985, the accused pleaded guilty and was convicted and fined \$9 850.
Misleading price representation (Sports equipment)	Collegiate/Arlington Sports Incorporated, carrying on business as Collegiate Sportsworld (London, Ontario)	One charge was laid on September 4, 1984, under paragraph 36(1)(d). On January 23, 1985, the accused pleaded guilty and was convicted and fined \$1 500.
Non-availability (Sports equipment)	Collegiate/Arlington Sports Incorporated, carrying on business as Collegiate Sportsworld (London, Ontario)	One charge was laid on September 4, 1984, under subsection 37(2). On January 23, 1985, the charge was dismissed.
Misleading price representation (Clocks)	Daniel Kuranji, carrying on business as The Clock Place (Kitchener, Ontario)	One charge was laid on August 20, 1984, under paragraph 36(1)(d). The accused pleaded not guilty but on January 23, 1985, was convicted and fined \$500.
False or misleading representation in a material respect (Clocks)	John Rauser and Westminster Clock Co. Ltd., both carrying on business as Salem Clock Co. (Toronto, Ottawa, Ontario)	Two charges under paragraph 36(1)(a) were laid against J. Rauser on May 28, 1984. Two charges under the same provision were laid against Westminster Clock Co. Ltd. on January 25, 1985. Westminster Clock Co. Ltd. pleaded guilty on January 25, 1985, and was convicted and fined \$4 000 on each charge, for a total fine of \$8 000. The charges against J. Rauser were withdrawn.
Misleading price representation (Clocks)	John Rauser and Westminster Clock Co. Ltd., both carrying on business as Salem Clock Co. (Toronto, Ottawa, Ontario)	Three charges were laid against J. Rauser on May 28, 1984, under paragraph 36(1)(d). Three charges were laid against Westminster Clock Co. Ltd. on January 25, 1985, under the same provision. On January 25, 1985, Westminster Clock Co. Ltd. pleaded guilty and was convicted and fined \$4 000 on each charge, for a total fine of \$12 000. The charges against J. Rauser were withdrawn.
False or misleading representation in a material respect (Jewellery)	Ani Jewellery Limited (Toronto, Ontario)	Nine charges were laid on July 6, 1984, under paragraph 36(1)(a). On February 6, 1985, the accused pleaded guilty to one charge and was convicted and fined \$3 000. The remaining charges were withdrawn.
Misleading price representation (Jewellery)	Ani Jewellery Limited (Toronto, Ontario)	Nine charges were laid on July 6, 1984, under paragraph 36(1)(d). On February 6, 1985, the charges were withdrawn.
Sale above advertised price (Drug store items)	Magasins Heriot Inc., carrying on business as Pharm-Ecomptes Jean Coutu (Drummondville, Québec)	Nineteen charges were laid on May 6, 1981, under section 37.1. The accused pleaded guilty and on February 8, 1985, was convicted and fined \$400 on each charge, for a total fine of \$7 600.
Misleading price representation (Carpets)	Compagnie de la Baie D'Hudson — Hudson's Bay Company (Montréal, Québec)	Two charges were laid on November 28, 1984, under paragraph 36(1)(d). The accused pleaded guilty to one charge and on February 15, 1985, was convicted and fined \$5 000. The remaining charge was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
Misleading price representation (Electronic games)	Compagnie de la Baie D'Hudson — Hudson's Bay Company (Montréal, Québec)	Four charges were laid on November 28, 1984, under paragraph 36(1)(d). The accused pleaded guilty to two charges and on February 15, 1985, was convicted and fined \$2 500 on each charge for a total fine of \$5 000. A stay of proceedings was entered with respect to the remaining charges.
False or misleading representation in a material respect (Insulation)	Burton Lumber Ltd. (Winnipeg, Manitoba)	One charge was laid on May 1, 1984, under paragraph 36(1)(a). The accused pleaded guilty and on February 18, 1985, was convicted and fined \$500.
False or misleading representation in a material respect (Waterbeds)	Burton Lumber Ltd. (Winnipeg, Manitoba)	Two charges were laid on January 22, 1985, under paragraph 36(1)(a). On February 18, 1985, the accused pleaded guilty to one charge and was convicted and fined \$1 000. A stay of proceedings was entered with respect to the remaining charge.
Misleading price representation (Sailboards)	Surf-Import SDN Inc. (Ottawa, Ontario)	Three charges were laid on January 21, 1985, under paragraph 36(1)(d). On February 19, 1985, a stay of proceedings was entered.
False or misleading representation in a material respect (Kitchen cabinets)	Hawthorne Distributors Kitchen and Bath Cabinets Limited, carrying on business as Hawthorne Kitchen Designs (Ottawa, Ontario)	Two charges were laid on March 16, 1984, under paragraph 36(1)(a). On February 20, 1985, the accused pleaded guilty to one charge and was convicted and fined \$1 000. The remaining charge was withdrawn.
Misleading price representation (Kitchen cabinets)	Hawthorne Distributors Kitchen and Bath Cabinets Limited, carrying on business as Hawthorne Kitchen Designs (Ottawa, Ontario)	Two charges were laid on March 16, 1984, under paragraph 36(1)(d). On February 20, 1985, the accused pleaded guilty to one charge and was convicted and fined \$1 000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Groceries)	Easy Save Foods Limited, carrying on business as Foodex (Gander, Newfoundland)	One charge was laid on June 29, 1984, under paragraph 36(1)(a). On February 25, 1985, the charge was withdrawn.
False or misleading representation in a material respect (Automobiles)	Jaguar Rover Triumph Canada Inc. (Montréal, Québec)	Two charges were laid on February 27, 1984, under paragraph 36(1)(a). On February 25, 1985, the accused pleaded guilty to one charge and was convicted and fined \$1 000. The remaining charge was withdrawn.
Double ticketing (Grocery store items)	Les Supermarchés Dominion Ltée (Verdun, St. Léonard, Québec)	Eleven charges were laid on January 30, 1981, under section 36.2. The accused pleaded not guilty but on February 22, 1985, was convicted on nine charges and fined \$2 500 on each charge, for a total fine of \$22 500. The remaining charges were withdrawn.
Sale above advertised price (Grocery store items)	Les Supermarchés Dominion Ltée (Verdun, St. Léonard, Québec)	Thirty one charges were laid on January 30, 1981, under section 37.1. The accused pleaded not guilty but on February 22, 1985, was convicted on 30 charges and fined \$1 500 on each charge, for a total fine of \$45 000. The remaining charge was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Body wrap treatment)	Brian John Renn and Chase Hair Transplant and Cosmetic Improvement Centre Ltd. (Toronto, Ontario)	Eleven charges were laid on May 24, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but were convicted on October 27, 1983. The corporate accused was fined \$300 on each charge and the individual accused was fined \$250 on each charge, for a total fine of \$5 500. An appeal filed by the accused was dismissed on February 25, 1985.
Representation without proper test (Body wrap treatment)	Brian John Renn and Chase Hair Transplant and Cosmetic Improvement Centre Ltd. (Toronto, Ontario)	Seven charges were laid on May 24, 1983, under paragraph 36(1)(b). The accused pleaded not guilty but were convicted on October 27, 1983. The corporate accused was fined \$300 on each charge and the individual accused was fined \$200 on each charge, for a total fine of \$3 500. An appeal filed by the accused was dismissed on February 25, 1985.
Promotional contest (Radial tires)	Canadian Tire Corporation Limited, and Pacific Associate Stores Limited, carrying on business as Canadian Tire (Vancouver, Burnaby, Langley, Surrey, British Columbia)	One charge was laid on September 12, 1984, under section 37.2. On February 27, 1985, the charge was dismissed.
False or misleading representation in a material respect (Modelling course)	Fifth Avenue Modelling and Production Agency Inc. and Moyez Jaffer (Calgary, Alberta)	One charge was laid on May 28, 1984, under paragraph 36(1)(a). The accused pleaded not guilty but on March 1, 1985, were convicted and fined \$1 000 each, for a total fine of \$2 000.
False or misleading representation in a material respect (Towels)	Les Distributions Muralex Inc. and Pierre Benoit (Montréal, Québec)	Ten charges were laid on July 13, 1984, under paragraph 36(1)(a). On March 4, 1985, the corporate accused pleaded guilty to eight charges and was convicted and fined \$1 000 on each charge, for a total fine of \$8 000. The remaining charges against the company and all charges against the individual were withdrawn.
Misleading price representation (Towels)	Les Distributions Muralex Inc. and Pierre Benoit (Montréal, Québec)	Ten charges were laid on July 13, 1984, under paragraph 36(1)(d). On March 4, 1985, the corporate accused pleaded guilty to seven charges and was convicted and fined \$1 000 on each charge, for a total fine of \$7 000. The remaining charges against the company and all charges against the individual were withdrawn.
False or misleading representation in a material respect (Body wrap treatments)	Stanley Seckenski and Mary Seckenski, carrying on business as Suddenly Slender and as Wat-A-Tan (Toronto, Ontario)	Fifteen charges were laid on May 24, 1983, under paragraph 36(1)(a). On March 5, 1985, the charges were withdrawn.
Representation without proper test (Body wrap treatments)	Stanley Seckenski and Mary Seckenski, carrying on business as Suddenly Slender and as Wat-A-Tan (Toronto, Ontario)	Two charges were laid on May 24, 1983, under paragraph 36(1)(b). On March 5, 1985, the charges were withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Towing service)	S & V Service Centers Ltd., Simon Poladian and Victor Poladian, carrying on business as S & V Service Centers (Cambridge, Ontario)	One charge was laid against S. Poladian and V. Poladian on August 28, 1984, under paragraph 36(1)(a). A further charge was laid against S & V Service Centers Ltd. on January 9, 1985, under paragraph 36(1)(a). On March 6, 1985, the corporate accused pleaded guilty and was convicted and fined \$400. The charge against the individuals was withdrawn.
False or misleading representation in a material respect (Modelling course)	Dennis Wayne Cook and Chesney Alvin Williams, carrying on business as Creative Expressions and as Denway Model Management (Calgary, Alberta)	Five charges were laid on October 5, 1984, under paragraph 36(1)(a). The accused pleaded not guilty, but on March 6, 1985, were convicted on four charges. D.W. Cook was fined \$10 000 and C.A. Williams was fined \$2 000, for a total fine of \$12 000. The remaining charge was withdrawn.
False or misleading representation in a material respect (Car rentals)	R.M.K. Enterprises Ltd., carrying on business as Budget Rent-A-Car of Winnipeg, Budget Rent-A-Car Corp. and as Budget Rent-A-Car (Winnipeg, Manitoba)	One charge was laid on April 26, 1983, under paragraph 36(1)(a). The accused was acquitted on August 2, 1984. On appeal by the Crown the decision was reversed and on March 6, 1985, the accused was convicted and fined \$250.
False or misleading representation in a material respect (Clothing)	272215 Alberta Ltd., 275199 Alberta Ltd. and 275186 Alberta Ltd., carrying on business as Francine's and operating under the partnership name of St. Clair Shops (Edmonton, Alberta)	One charge was laid on August 24, 1984, under paragraph 36(1)(a). On March 6, 1985, the accused pleaded guilty and were convicted and fined \$1 000 each, for a total fine of \$3 000.
False or misleading representation in a material respect (Clothing)	272215 Alberta Ltd., 275199 Alberta Ltd. and 275186 Alberta Ltd., carrying on business as Francine's and operating under the partnership name of St. Clair Shops (St. Albert, Alberta)	One charge was laid on August 24, 1984, under paragraph 36(1)(a). On March 11, 1985, the charge was withdrawn.
False or misleading representation in a material respect (Furniture)	Samson Equipment de Bureau Inc. (Montréal, Québec)	Four charges were laid on June 1, 1984, under paragraph 36(1)(a). The accused pleaded guilty to one charge and on March 12, 1985, was convicted and fined \$500. The remaining charges were withdrawn.
Misleading price representation (Furniture)	Samson Equipment de Bureau Inc. (Montréal, Québec)	Four charges were laid on June 1, 1984, under paragraph 36(1)(d). The accused pleaded guilty and on March 12, 1985, was convicted and fined \$500 on each charge, for a total fine of \$2 000.
Representation without proper test (Storm windows)	Nu-Tech Marketing Systems Limited (Mississauga, Ontario)	One charge was laid on September 10, 1984, under paragraph 36(1)(b). The accused pleaded guilty and on March 18, 1985, was convicted and fined \$5 000.
False or misleading representation in a material respect (Carpets)	Alexanian & Sons Limited (Hamilton, London, Ontario)	Two charges were laid on January 16, 1984, under paragraph 36(1)(a). On October 16, 1984, three charges were laid under paragraph 36(1)(a) and on October 30, 1984, the original information was withdrawn. On March 27, 1985, the second information was withdrawn.
Misleading price representation (Carpets)	Alexanian & Sons Limited (London, Ontario)	One charge was laid on October 16, 1984, under paragraph 36(1)(d). On March 27, 1985, the charge was withdrawn.

APPENDIX II — (Continued)

Part II - Misleading Advertising and Deceptive Marketing Practices

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken and Results
False or misleading representation in a material respect (Home spa systems)	Cannibal Tubs Inc. (North Vancouver, British Columbia)	One charge was laid on November 30, 1984, under paragraph 36(1)(a). The accused pleaded not guilty but on March 28, 1985, was convicted and fined \$1 500.
Non-availability (Home spa systems)	Cannibal Tubs Inc. (North Vancouver, British Columbia)	One charge was laid on November 30, 1984, under subsection 37(2). On March 28, 1985 the charge was dismissed.
False or misleading representation in a material respect (Contact lenses)	Your Eyes Only Optical Ltd. and Brian Beal (Delta, British Columbia)	One charge was laid on December 4, 1984, under paragraph 36(1)(a). The accused pleaded not guilty but on March 28, 1985, were convicted. The individual was fined \$300 and the company was fined \$5, for a total fine of \$305.
Promotional contest (Festival)	The Greek Productions Inc. and Tom Kourtesia (Toronto, Ontario)	Three charges were laid on January 13, 1984, under section 37.2. On June 6, 1984, the corporate accused pleaded guilty to one charge and was convicted and fined \$5 000. A stay of proceedings was entered with respect to the remaining charges against the corporate accused and all charges against the individual. On March 29, 1985, the remaining charges were withdrawn.
False or misleading representation in a material respect (Jewellery)	Thompson's Jewellery Limited (St. John's, Newfoundland)	Two charges were laid on October 6, 1982, under paragraph 36(1)(a). On January 7, 1983, the accused pleaded guilty and was convicted and fined \$2 500 on each charge, for a total fine of \$5 000. An appeal by the accused was subsequently abandoned.

APPENDIX III

Proceedings Completed Following Application to the Restrictive Trade Practices Commission under Part IV.1 of the Act

Nature of Inquiry	Names of persons or Companies Proceeded Against	Action Taken and Results
Refusal to deal (Motion pictures)	Astral Films Limited; Columbia Picture Industries Inc.; Paramount Productions Inc.; Universal Films (Canada); Warner Bros. Distributing (Canada) Limited; United Artists Corporation; and Twentieth Century-Fox Film Corporation	An application was filed under section 31.2 with the Commission on December 22, 1982. The hearings, scheduled to commence on May 30, 1983, were adjourned for 12 months contingent upon the distributors entering into detailed undertakings with the Director. The undertakings, which became effective on July 1, 1983, provided for a film-by-film theatre-by-theatre system of distribution whereby the distributors afford eligible exhibitors the opportunity to submit offers for their motion pictures and license the exhibitor that in their business judgment submitted the best offer. Following a final report to the Commission in July 1984 on the effect of the undertakings, the Director withdrew the application. The Director advised the distributors that he considered the undertakings to continue in full force and effect.

APPENDIX IV

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Travel tours)	Skyhawk Holidays Limited (Stephenville, New Brunswick)	One charge was laid on November 6, 1979, under paragraph 36(1)(a). On April 17, 1981, the charge was dismissed. Under appeal by the Crown.
False or misleading representation in a material respect (T.V. antenna)	C.C.C.L. Canadian Consumer Company Ltd. (Montréal, Québec)	One charge was laid on November 23, 1979, under paragraph 36(1)(a). The accused was convicted on December 11, 1980, and fined \$7 500 on January 10, 1981. Under appeal by the accused.
Pyramid selling scheme (Food supplements, cleaning and personal care products)	Shaklee Canada Inc., (Edmonton, Alberta)	Proceedings were instituted on November 14, 1980, in Edmonton, Alberta, under subsection 30(2) for an Order of Prohibition. On February 16, 1981, the Order was refused by the Federal Court. Under appeal by the Crown.
False or misleading representation in a material respect (Electric drill)	Consumers Distributing Company Limited (County of Lambton, Ontario)	One charge was laid on June 29, 1981, under paragraph 36(1)(a). The accused pleaded guilty and on April 19, 1982, was convicted and fined \$7 000. Under appeal by the accused.
False or misleading representation in a material respect (Gas grill)	Consumers Distributing Company Limited (Toronto, Ontario)	Two charges were laid on June 29, 1981, under paragraph 36(1)(a). The accused pleaded guilty to one charge and on April 19, 1982, was convicted and fined \$7 000. The remaining charge was withdrawn. Under appeal by the accused.
Non-availability (Toy)	Consumers Distributing Company Limited (Ottawa, Ontario)	One charge was laid on June 29, 1981, under subsection 37(2). The accused pleaded guilty and on April 19, 1982, was convicted and fined \$7 000. Under appeal by the accused.
Representation without proper test (Electric speed control)	Consumers Distributing Company Limited (Toronto, Ontario)	One charge was laid on June 29, 1981, under paragraph 36(1)(b). The accused pleaded guilty and on April 19, 1982, was convicted and fined \$7 000. Under appeal by the accused.
Sale above advertised price (Gold rings)	Consumers Distributing Company Limited (Toronto, Ontario)	One charge was laid on June 29, 1981, under section 37.1. The accused pleaded guilty and on April 19, 1983, was convicted and fined \$7 000. Under appeal by the accused.
False or misleading representation in a material respect (Mail solicitations)	Intra Canada Telecommunications Limited and Ralph Lawrence Devine (Toronto, Ontario)	One charge was laid on October 23, 1981, under paragraph 36(1)(a). The accused pleaded not guilty but on March 16, 1984, was convicted. On May 31, 1984, the corporate accused was fined \$10 000 and R. L. Devine was fined \$50 000, for a total fine of \$60 000. Under appeal by the accused.
False or misleading representation in a material respect (Gas-saving seminar)	Thomas James Scott and James Lowry (Calgary, Alberta)	One charge was laid on October 28, 1981, under paragraph 36(1)(a). On November 6, 1981, the charge was withdrawn and replaced by another charge under the same paragraph.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Gas-saving device)	Anthony Simon, carrying on business as Simons Importers and Wholesalers (Grand Falls, Newfoundland)	One charge was laid on December 2, 1981, under paragraph 36(1)(a). On June 17, 1981, the accused was acquitted. An appeal filed by the Crown was allowed on February 7, 1983, and a new trial was ordered.
False or misleading representation in a material respect (Gas-saving device)	Michael Bourdeaux (Vancouver, British Columbia)	One charge was laid on July 30, 1982, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Michael Bourdeaux (Vancouver, British Columbia)	One charge was laid on July 30, 1982, under paragraph 36(1)(b).
False or misleading representation in a material respect (Bulk foods)	Loblaws Limited (Toronto, Ontario)	Four charges were laid on November 12, 1982, under paragraph 36(1)(a). The accused pleaded not guilty, but on May 24, 1983, was convicted and fined \$20 000. Under appeal by the accused.
False or misleading representation in a material respect (Stereo equipment)	Mann's T.V. & Stereo Limited (Toronto, Ontario)	Nineteen charges were laid on December 23, 1982, under paragraph 36(1)(a). The accused pleaded not guilty but on November 10, 1983, was convicted on 13 charges and on February 1, 1984, was fined \$4 000 on each of six charges, for a total fine of \$24 000. Sentence was suspended on seven charges and the remaining charges were withdrawn. Under appeal by the accused.
False or misleading representation in a material respect (Cameras)	Westfair Foods Ltd., carrying on business as Super Valu (Winnipeg, Manitoba)	One charge was laid on April 26, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but on September 7, 1984, was convicted and on September 20, 1984, was fined \$6 000. Under appeal by accused.
Pyramid selling scheme (Cleaning products)	Sani-True Marketing Ltd. and John Paul Savard (Edmonton, Alberta)	Five charges were laid on April 27, 1983, under section 36.3. On December 6, 1983, the charges against the corporate accused were stayed.
False or misleading representation in a material respect (Body wrap treatment)	Orlando Rodrigues, carrying on business as Cellulite Control Centre (Toronto, Ontario)	Fifteen charges were laid on May 24, 1983, under paragraph 36(1)(a).
Representation without proper test (Body wrap treatment)	Orlando Rodrigues, carrying on business as Cellulite Control Centre (Toronto, Ontario)	Four charges were laid on May 24, 1983, under paragraph 36(1)(b).
False or misleading representation in a material respect (Body wrap treatment)	Terrence Filion and 494920 Ontario Inc., carrying on business as Professional Inch Loss Clinic (Toronto, Ontario)	Six charges were laid on May 24, 1983, under paragraph 36(1)(a).
Representation without proper test (Body wrap treatment)	Terrence Filion and 494920 Ontario Inc., carrying on business as Professional Inch Loss Clinic (Toronto, Ontario)	Seven charges were laid on May 24, 1983, under paragraph 36(1)(b).
Representation without proper test (Engine additive)	Molyslip (Canada) Inc. (Toronto, Ontario)	One charge was laid on May 26, 1983, under paragraph 36(1)(b). On December 7, 1984, the accused pleaded guilty and was convicted and fined \$1 500. A prohibition order was also imposed. An appeal against sentence was filed by the accused.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
Pyramid selling scheme (Employment opportunity)	Agence de Promotion et de Courtage Tri-Action Inc., Jean-Pierre Boivin and Paul-André Boivin (Longueuil, Québec)	One charge was laid on June 6, 1983, under section 36.3. The accused pleaded not guilty but were convicted on April 27, 1984. On June 28, 1984, the corporate accused was fined \$15 000 and each individual was fined \$2 500. An appeal by the accused was dismissed on October 5, 1984. Under further appeal by the accused.
False or misleading representation in a material respect (Clothing)	Boutique Chérie Canada Ltée (Montréal, Québec)	Four charges were laid on August 26, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Food items)	Westfair Foods Ltd., carrying on business as Super Valu (Winnipeg, Manitoba)	Two charges were laid on August 10, 1983, under paragraph 36(1)(a).
False or misleading representation in a material respect (Photo supplies)	Westfair Foods Ltd., carrying on business as Super Valu (Saskatoon, Saskatchewan)	Two charges were laid on August 30, 1983, under paragraph 36(1)(a). On February 16, 1984, the accused was acquitted. On January 31, 1985, an appeal by the Crown was dismissed. Under further appeal by the Crown.
False or misleading representation in a material respect (Garage services)	Poliquin Service de Pneus Inc. (Montréal, Québec)	One charge was laid on October 17, 1983, under paragraph 36(1)(a). The accused pleaded not guilty but on September 10, 1984, was convicted and on December 7, 1984, was fined \$1 500. Under appeal by the accused.
Misleading price representation (Tires)	Poliquin Service de Pneus Inc. (Montréal, Québec)	One charge was laid on October 17, 1983, under paragraph 36(1)(d). The accused pleaded not guilty but on September 10, 1984, was convicted and on December 7, 1984, was fined \$1 500. Under appeal by the accused.
False or misleading representation in a material respect (Gas)	Bernard Teixeira, carrying on business as Compagnie Internationale Globern (Valleyfield, Québec)	Three charges were laid on January 6, 1984, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Bernard Teixeira, carrying on business as Compagnie Internationale Globern (Valleyfield, Québec)	Three charges were laid on January 6, 1984, under paragraph 36(1)(b).
False or misleading representation in a material respect (Grocery items)	Dominion Stores Limited, carrying on business as Best For Less (Douglas-town, New Brunswick)	Ten charges were laid on January 9, 1984, under paragraph 36(1)(a). On May 24, 1984, the charges were dismissed. Under appeal by the Crown.
False or misleading representation in a material respect (Gas-saving device)	Whitworth Marine Limited, carrying on business as Soni-jet Fuel Systems and Michael Patrick McLean carrying on business as Gas-Wise Marketing Co. (London, Ontario)	Six charges were laid on January 23, 1984, under paragraph 36(1)(a) against the individual. An additional charge under that paragraph was laid against the corporate accused on January 24, 1984.
Misleading testimonial or test (Gas-saving device)	Michael Patrick McLean, carrying on business as Gas-Wise Marketing Co. (London, Ontario)	One charge was laid on January 23, 1984, under section 36.1.
Representation without proper test (Gas-saving device)	Whitworth Marine Limited, carrying on business as Soni-jet Fuel Systems and Michael Patrick McLean carrying on business as Gas-Wise Marketing Co. (London, Ontario)	Six charges were laid on January 23, 1984, under paragraph 36(1)(b) against the individual. An additional charge under that paragraph was laid against the corporate accused on January 24, 1984.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
Representation without proper test (Gas-saving device)	Linda Hoogmoed and Dirk Jan Hoogmoed, carrying on business as Adonis Marketing Co. (Winnipeg, Manitoba)	One charge was laid on February 3, 1984, under paragraph 36(1)(b).
False or misleading representation in a material respect (Pilot training course)	Ian Colin Bodnar and Lakehead Helicopter Services Ltd. (Thunder Bay, Ontario)	Six charges were laid on February 8, 1984, under paragraph 36(1)(a). On April 27, 1984, both accused pleaded guilty and were convicted. The company was fined \$1 200 and the individual was fined \$1 800. An appeal has been filed by the Crown against sentence.
False or misleading representation in a material respect (Drug store items)	Alain Haddad, carrying on business as Pharmacie Jean Coutu (A. Haddad) Enr. (Sherbrooke, Québec)	Two charges were laid on March 14, 1984, under paragraph 36(1)(a).
Pyramid selling scheme (Discount buying club)	Merchx of Canada Ltd. and Fred Verigen (Edmonton, Alberta)	Two charges were laid on April 13, 1984, under section 36.3. On October 4, 1984, the accused were acquitted. Under appeal by the Crown.
False or misleading representation in a material respect (Trailer couplings)	Canadian Tire Corporation Limited and Algonquin Industries International Inc., carrying on business as Algonquin Mfg. Ltd. (Gloucester, Ottawa, Nepean, Ontario)	On April 18, 1984, seven charges were laid under paragraph 36(1)(a). The accused were charged jointly with respect to one charge. Canadian Tire Corporation Limited was charged solely with respect to two charges, and Algonquin Industries International Inc. was charged solely with respect to four charges.
Representation without proper test (Trailer couplings)	Canadian Tire Corporation Limited and Algonquin Industries International Inc., carrying on business as Algonquin Mfg. Ltd. (Gloucester, Ottawa, Nepean, Ontario)	On April 18, 1984, seven charges were laid under paragraph 36(1)(b). The accused were charged jointly with respect to one charge. Canadian Tire Corporation Limited was charged solely with respect to two charges, and Algonquin Industries International Inc. was charged solely with respect to four charges.
False or misleading representation in a material respect (Reducing aid)	Jay Norris Canada Inc. (Montréal, Québec)	One charge was laid on April 24, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Air conditioners)	Melvin E. Kotyk carrying on business as Power Coil Marketing Co. (Winnipeg, Manitoba)	Two charges were laid on May 7, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Life insurance)	The Independent Order of Foresters, Frank Degenaar and Garth Carter (Toronto, Ontario)	Thirteen charges were laid on June 14, 1984, under paragraph 36(1)(a). The Information was withdrawn and on March 22, 1985, 15 new charges were laid under the same paragraph. The accused were charged jointly with respect to three charges and the company was charged solely with respect to five charges. The company and F. Degenaar were charged jointly with respect to four charges, and the company and G. Carter were charged jointly with respect to three charges.
False or misleading representation in a material respect (Jewellery)	Hersh Litvack, Arlene Litvack and Canadian Gold Wholesalers Ltd., formerly 443587 Ontario Limited, carrying on business as Canadian Gold Wholesalers (Toronto, Ontario)	Twelve charges were laid on July 6, 1984, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Water purifier)	Lel Contracting Ltd. and Jan Lawson (Maple, Vaughan, Ontario)	Four charges were laid on July 12, 1984, under paragraph 36(1)(a). On October 9, 1984, four new charges were laid under paragraph 36(1)(a).
Representation without proper test (Water purifier)	Lel Contracting Ltd. and Jan Lawson (Maple, Vaughan, Ontario)	Four charges were laid on July 12, 1984, under paragraph 36(1)(b). On October 9, 1984, four new charges were laid under paragraph 36(1)(b).
False or misleading representation in a material respect (Houses)	Meadows Homes Limited, Martin Atkins Limited, Gary Goldman, Stuart Winick and Pekka A. Varvas (Ancaster, Ontario)	Five charges were laid on July 27, 1984, under paragraph 36(1)(a).
Misleading price representation (Sporting goods)	E.J.N. Sports Ltd., carrying on business as Elgin Sports (Ottawa, Ontario)	One charge was laid on August 1, 1984, under paragraph 36(1)(d).
False or misleading representation in a material respect (Gas-saving device)	Canadian Tire Corporation Limited (Toronto, Ontario)	One charge was laid on August 2, 1984, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Canadian Tire Corporation Limited (Toronto, Ontario)	One charge was laid on August 2, 1984, under paragraph 36(1)(b).
False or misleading representation in a material respect (Gas-saving device)	C.K.W. Energy Corporation, Robert Kolvek, Kay Don Whipple and James B. Carver (Fort Erie, Ontario, and Montréal, Québec)	Two charges were laid on August 20, 1984, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	C.K.W. Energy Corporation, Robert Kolvek, Kay Don Whipple and James B. Carver (Fort Erie, Ontario, and Montréal, Québec)	Two charges were laid on August 20, 1984, under paragraph 36(1)(b).
Misleading price representation (Gas-saving device)	C.K.W. Energy Corporation, Robert Kolvek, Kay Don Whipple and James B. Carver (Fort Erie, Ontario, and Montréal, Québec)	Two charges were laid on August 20, 1984, under paragraph 36(1)(d).
False or misleading representation in a material respect (Banking services)	Bank of Montréal (Edmonton, Alberta)	One charge was laid on August 30, 1984, under paragraph 36(1)(a). On December 11, 1984, the accused was acquitted. Under appeal by the Crown.
Pyramid selling scheme (Miscellaneous items)	Allen Strauss, Ernie Coetzee and T.I.P.C. Marketing Inc., carrying on business as Total Image of Canada (Toronto, Ontario)	One charge was laid on September 5, 1984, under section 36.3.
False or misleading representation in a material respect (Modelling course)	Dennis Wayne Cook alias Dennis Wayne, alias Mr. Wayne, carrying on business as Denway Model Management and as Creative Expressions Model Management (Winnipeg, Manitoba)	Eight charges were laid on September 10, 1984, under paragraph 36(1)(a).
Pyramid selling scheme (Automobile club)	Braden Caldwell, John Radu, James Thomson, Graham Maxmenko, Martin Seepersad, Melvin Woods, Wilbert Schweitzer and Kenneth LaChapelle (Port Coquitlam, British Columbia)	One charge was laid on September 12, 1984, against B. Caldwell, J. Radu and J. Thomson under section 36.3. On November 19, 1984, four additional charges were laid against B. Caldwell. Two charges were laid against J. Radu, W. Schweitzer and K. LaChapelle. One charge was laid against J. Thomson, G. Maxmenko, M. Seepersad and M. Woods.

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Furniture)	G.L.R. Distribution Inc. (Québec, Québec)	Four charges were laid on September 22, 1984, under paragraph 36(1)(a). On October 11, 1984, the accused pleaded guilty and was convicted and fined \$1 500 on each charge, for a total fine of \$6 000. Under appeal by the accused.
False or misleading representation in a material respect (Trolley)	Shell Canada Limitée (Montréal, Québec)	One charge was laid on October 1, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Gas-saving device)	Maximilr Automotives Ltd. and Norman Hands (Edmonton, Alberta)	One charge was laid on October 3, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Gas-saving device)	Joseph Laramée, carrying on business as Econo-Mizer Industries Ltd. (Penticton, British Columbia)	One charge was laid on October 11, 1984, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Joseph Laramée, carrying on business as Econo-Mizer Industries Ltd. (Penticton, British Columbia)	One charge was laid on October 11, 1984, under paragraph 36(1)(b).
False or misleading representation in a material respect (Houses)	Viewmark Homes Ltd. (Toronto, Markham, Ontario)	Five charges were laid on November 1, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Clothing)	The Young Manufacturer Inc., carrying on business as Woolskins and as Stitches (Edmonton, Alberta)	Five charges were laid on November 2, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Bedspreads)	D.J. Schiller Stores Inc., (Montréal, Québec)	Two charges were laid on November 2, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Books)	Postal Promotions Limited, carrying on business as Halbert's (Nepean, Don Mills, Ontario)	Three charges were laid on November 6, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Pay television)	First Choice Canadian Communications Corporation (Nationwide)	Forty-seven charges were laid on November 8, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Furniture)	Fred Kolowrat, Doris Kolowrat and Neotar Enterprises Ltd., carrying on business as City Sofa and as Tecum Teak (Victoria, British Columbia)	Five charges were laid on November 9, 1984, under paragraph 36(1)(a).
False or misleading representation in a material respect (Television converters)	Morton Victor, Victor Vincent Vacirca and Morvic Investments Ltd., carrying on business as TV Liquidators (Toronto, Ontario)	One charge was laid on December 7, 1984, against the corporate accused under paragraph 36(1)(a). The original information was withdrawn and on February 13, 1985, one charge was laid against each of the accused under paragraph 36(1)(a).
Misleading price representation (Furniture)	Les Meubles Girouard Inc., (Drummondville, Québec)	Two charges were laid on December 13, 1984, under paragraph 36(1)(d).
False or misleading representation in a material respect (Stereo equipment)	Stereo Emporium of Canada Limited, carrying on business as The Stereo Emporium (Toronto, Ontario)	Fourteen charges were laid on January 17, 1985, under paragraph 36(1)(a).
Misleading price representation (Hardware items)	Cité de L'Outil St-Martin Inc., (Montréal, Québec)	Five charges were laid on January 18, 1985, under paragraph 36(1)(d).
Misleading price representation (Aquariums)	542401 Ontario Limited and Allan Saul (Toronto, Ontario)	Ten charges were laid on January 22, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Aquariums)	542401 Ontario Limited and Allan Saul (Toronto, Ontario)	Ten charges were laid on January 22, 1985, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
Misleading price representation (Hardware items)	Christiane Hrynoveicki, Kim Liquidation Inc. and 119624 Canada Inc., carrying on business as Kim Liquidation (Caledonia, Ontario)	Three charges were laid on January 25, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Window insulation)	Larry Smith and Fra-Lar Enterprises Ltd., carrying on business as National Marketing Group (Toronto, Ontario)	One charge was laid on January 29, 1985, under paragraph 36(1)(a).
Representation without proper test (Window insulation)	Larry Smith and Fra-Lar Enterprises Ltd., carrying on business as National Marketing Group (Toronto, Ontario)	One charge was laid on January 29, 1985, under paragraph 36(1)(b).
False or misleading representation in a material respect (Modelling course)	483518 Ontario Ltd., carrying on business as Suzanne's Modelling Agency (Ottawa, Ontario)	Three charges were laid on February 4, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Persian rugs)	Korhani Import Export Inc. and Mohammed Ali Korhani Shirazi (Montréal, Québec)	Eighteen charges were laid on February 7, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Health care products)	Pharmacie Arseneault Ltée-Arseneault Pharmacy Ltd., carrying on business as Pharm-Escomptes Jean Coutu (Bathurst, New Brunswick)	Six charges were laid on February 8, 1985, under paragraph 36(1)(a).
Misleading price representation (Paint)	Heather Building Supplies Ltd. (Sydney, Nova Scotia)	Two charges were laid on February 11, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Jewellery)	J. Joseph Sebag, carrying on business as P.J. Cartier (Québec, Québec)	One charge was laid on February 12, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Jewellery)	Importateur E. Lavoie Inc., carrying on business as Lavoie Importateur (Jonquière, Québec)	One charge was laid on February 12, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Television sets)	Morton Victor, Victor Vincent Vacirca and Morvic Investments Ltd., carrying on business as TV Liquidators (Toronto, Ontario)	One charge was laid on February 13, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Hardware items and housewares)	Midland Liquidators Ltd., (Edmonton, Alberta)	One charge was laid on February 13, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Kitchen knives)	Kenneth Gordon Hopkins, carrying on business as K. & P. Hopkins Ltd. (London, Ontario)	Two charges were laid on February 14, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Carpets)	The Carpet Place (Sarnia) Ltd., carrying on business as The Carpet Place (Sarnia, Ontario)	Three charges were laid on February 18, 1985, under paragraph 36(1)(a).
Misleading price representation (Carpets)	The Carpet Place (Sarnia) Ltd., carrying on business as The Carpet Place (Sarnia, Ontario)	Three charges were laid on February 18, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Miscellaneous items)	Location Yves Thériault Inc. (Montréal, Québec)	Four charges were laid on February 20, 1985, under paragraph 36(1)(a).
Misleading price representation (Mattresses and box springs)	Valley Ridge Furniture Ltd. (Saint John, New Brunswick)	One charge was laid on February 25, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Television sets)	Paul Dubé Télévision Inc. (Montréal, Québec)	Three charges were laid on February 26, 1985, under paragraph 36(1)(a).

APPENDIX IV — (Continued)

Proceedings Pending at the End of Fiscal Year in Marketing Practices Cases

Nature of Inquiry	Names of Accused and Location of Offence	Action Taken
False or misleading representation in a material respect (Automobiles)	Pacific Dodge Chrysler Ltd. (Surrey, British Columbia)	One charge was laid on March 8, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Automobiles)	Freeway Plymouth Chrysler Ltd. (Surrey, British Columbia)	Two charges were laid on March 8, 1985, under paragraph 36(1)(a).
Misleading price representation (Hardware items)	98549 Canada Ltd. (Esterhazy, Saskatchewan)	Two charges were laid on March 11, 1985, under paragraph 36(1)(d).
Misleading price representation (Hardware items)	Maxicom Liquidation Inc. (Regina, Saskatchewan)	Two charges were laid on March 11, 1985, under paragraph 36(1)(d).
Misleading price representation (Jewellery)	Bijouterie Aux Rubis inc. (Chicoutimi, Québec)	Four charges were laid on March 18, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Rental accommodation)	Thomas C. Assaly Corporation Ltd. and Asgo Management Limited (Ottawa, Ontario)	Four charges were laid on March 18, 1985, under paragraph 36(1)(a).
Misleading price representation (Video cassette recorders)	Astra Electronics (1982) Ltd., carrying on business as Astra Electronics (Moncton, New Brunswick)	Two charges were laid on March 18, 1985, under paragraph 36(1)(d).
Misleading price representation (Jewellery)	Victor Sebag, carrying on business as Bijouterie Victor Enr. (Chicoutimi, Québec)	One charge was laid on March 18, 1985, under paragraph 36(1)(d).
False or misleading representation in a material respect (Jewellery)	Jackie Sebag, carrying on business as Labelle Bijouterie Enr. (Jonquière, Québec)	Three charges were laid on March 20, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Clothing and miscellaneous items)	Les Magasins Maxi (LaSalle) Inc. (Laval, Québec)	Two charges were laid on March 21, 1985, under paragraph 36(1)(a).
False or misleading representation in a material respect (Houses)	Total Renovations Ltd. (Fredericton, New Brunswick)	Two charges were laid on March 22, 1985, under paragraph 36(1)(a).
Representation without proper test (Slimming clinic)	Big Mac Investments Ltd., Arla McDonnell and Gary Gordon McDonnell, carrying on business as Slim-Tone Clinic (Winnipeg, Manitoba)	Two charges were laid on March 26, 1985, under paragraph 36(1)(b).
False or misleading representation in a material respect (Grocery items)	Loblaws Limited, carrying on business as No Frills (Dartmouth, Nova Scotia)	Three charges were laid on March 27, 1985, under paragraph 36(1)(a).
Representation without proper test (Gas-saving device)	Professional Technology of Canada Ltd. (Edmonton, Alberta)	One charge was laid on March 27, 1985, under paragraph 36(1)(b).
False or misleading representation in a material respect (Swimming pools)	William Carr, Glenn Donley and Rand Pools & Services Ltd., carrying on business as Rand Pools & Spas, and Rand Pools West Limited, carrying on business as Rand Pools & Spas (Toronto, Ontario)	Two charges were laid on March 28, 1985, under paragraph 36(1)(a).
Non-availability (Air transportation)	Air Canada (Toronto, Ontario)	Three charges were laid on March 29, 1985, under subsection 37(2).

APPENDIX V

Table of Cases

The following is a list of recent case citations relating to Canadian anticompetitive legislation.

- Irvine et al. v. R.T.P.C. et al.*, [1982] 1 F.C. 72, (1981), 56 C.P.R. (2d) 83 (T.D.). Application for certiorari, prohibition and mandamus
- Irvine et al. v. R.T.P.C. et al.*, [1982] 2 F.C. 500, (1981), 65 C.C.C. (2d) 108, 62 C.P.R. (2d) 1 (C.A.). Appeal
- Couture v. Hewison et al.* (1982), 145 D.L.R. (3d) 55, [1983] 2 W.W.R. 267, 41 B.C.L.R. 233, 3 C.C.C. (3d) 52, 71 C.P.R. (2d) 189 (C.A.). Appeal — Jurisdiction of court
- R. v. Mediacom Indus. Inc. et al.* (1982), 36 O.R. (2d) 281, 63 C.P.R. (2d) 75 (H.C.J.). Application for certiorari, mandamus and prohibition
Note: affirmed (1982), 37 O.R. (2d) 91, 68 C.P.R. (2d) 285n (C.A.).
- Jim Pattison Industries Ltd. v. The Queen* (1985), 3 C.P.R. (3d) 9 (F.C.T.D.). Special case under Rule 475 of Federal Court
- R. v. Mediacom Industries Inc. et al.* (1985), 3 C.P.R. (3d) 47 (Ont. H.C.J.)
- R. v. Schelew et al.* (1982), 38 N.B.R. (2d) 340, 63 C.P.R. (2d) 140 (Q.B.). Trial
- R. v. Schelew et al.* (1984), 52 N.B.R. (2d) 142, 78 C.P.R. (2d) 102 (C.A.). Appeal
- Re C.P. Transp. Co. and Alta. Prov. Ct.* (1982), 35 A.R. 132, 135 D.L.R. (3d) 89, [1982] 2 W.W.R. 673, 63 C.P.R. (2d) 113 (C.A.).
- Atty-Gen. Can. v. C.N. Transp. Ltd. et al.*, [1983] 2 S.C.R. 206, 49 A.R. 39, 49 N.R. 241, 3 D.L.R. (4th) 16, [1984] 1 W.W.R. 193, (1983), 76 C.P.R. (2d) 1. Appeal — Constitutional validity of prosecution by Attorney General of Canada
- C.N. Transp. Ltd. v. Alta. Prov. Ct.* (1984), 55 A.R. 229 (Q.B.). Application for order prohibiting continuation of proceedings — Charter of Rights
- C.P. Express & Transp. Ltd. v. Alta. Prov. Ct.* (1984), 55 A.R. 199, 33 Alta. L.R. (2d) 59 (Q.B.). Application for order prohibiting Provincial Court from continuing proceedings
- BBM Bureau of Measurement v. Director of Investigation and Research* (1982), 63 C.P.R. (2d) 63 (F.C.A.). Application of A.C. Nielsen Company of Canada Limited for leave to intervene
- BBM Bureau of Measurement v. Director of Investigation and Research* (1982), 69 C.P.R. (2d) 286 (F.C.T.D.). Motion for an order staying execution of order of the R.T.P.C.
- BBM Bureau of Measurement v. Director of Investigation and Research* (1984), 52 N.R. 137, 9 D.L.R. (4th) 600, 12 C.C.C. (3d) 560, 82 C.P.R. (2d) 60 (F.C.A.). Application to review and set aside R.T.P.C. order
- R. v. Cluett, Peabody Can. Inc.* (1982), 64 C.P.R. (2d) 30 (Ont. Co. Ct.). Trial
- R. v. Cluett, Peabody Can. Inc.* (1983), 71 C.P.R. (2d) 280n (Ont. C.A.). Appeal
- Southam Inc. v. Hunter, Director of Investigation and Research et al.* (1982), 136 D.L.R. (3d) 133, [1982] 4 W.W.R. 673, 20 Alta L.R. (2d) 114, 68 C.C.C. (2d) 356, 65 C.P.R. (2d) 80 (Q.B.). Application for interim injunction against continuation of search — Charter of Rights
- Southam Inc. v. Hunter, Director of Investigation and Research et al.* (1982), 42 A.R. 108, 65 C.P.R. (2d) 116 (C.A.). Application for order on custody of documents seized pending hearing of appeal — Charter of Rights

- Southam Inc. v. Hunter, Director of Investigation and Research et al.*, 42 A.R. 93, 147 D.L.R. (3d) 420, [1983] 3 W.W.R. 385, 24 Alta L.R. (2d) 307, 3 C.C.C. (3d) 497, 72 C.P.R. (2d) 145 (C.A.). Appeal — Charter of Rights
- Hunter, Director of Investigation and Research v. Southam Inc.*, [1984] 2 S.C.R. 145, 55 A.R. 291, 11 D.L.R. (4th) 641, [1984] 6 W.W.R. 577, 33 Alta L.R. (2d) 193, 14 C.C.C. (3d) 97, 2 C.P.R. (3d) 1, 27 B.L.R. 297. Appeal — Charter of Rights
- R. v. Uranium Can. Ltd. et al.* (1982), 38 O.R. (2d) 130, 138 D.L.R. (3d) 626, 68 C.C.C. (2d) 200, 66 C.P.R. (2d) 190, 17 B.L.R. 275 (H.C.J.). Application to prohibit judge from proceeding with preliminary inquiry — Crown immunity
- R. v. Uranium Can. Ltd. et al.* (1982), 39 O.R. (2d) 474, 68 C.C.C. (2d) 200, 66 C.P.R. (2d) 207 (C.A.). Appeal — Crown immunity
- R. v. Eldorado Nuclear Ltd. et al.*, [1983] 2 S.C.R. 551, 50 N.R. 120, 77 C.P.R. (2d) 1. Appeal
- R. v. P.P.G. Indus. Can. Ltd.* (1982), 146 D.L.R. (3d) 261, 40 B.C.L.R. 299, 67 C.P.R. (2d) 192 (S.C.). Petition for declaration and mandamus — Charter of Rights
- R. v. P.P.G. Indus. Can. Ltd.* (1983), 146 D.L.R. (3d) 261, 42 B.C.L.R. 334, 71 C.P.R. (2d) 56 (C.A.). Appeal — Charter of Rights
- R. v. Miller's T.V. Ltd.* (1982), 19 Man. R. (2d) 259 (Co. Ct.). Appeal
- Director of Investigation and Research v. R.T.P.C. et al.*, [1983] 1 F.C. 520, (1982), 142 D.L.R. (3d) 333, 67 C.P.R. (2d) 172 (T.D.). Application for mandamus directing R.T.P.C. to issue subpoenas
- Canadian Federation of Independent Petroleum Marketers v. R.T.P.C. et al.* (1983), 70 C.P.R. (2d) 151 (F.C.T.D.). Application for mandamus requiring R.T.P.C. to permit cross-examination and to issue subpoenas
- Restrictive Trade Practices Commission et al. v. Director of Investigation and Research*, [1983] 2 F.C. 222, 145 D.L.R. (3d) 540, 70 C.P.R. (2d) 145 (C.A.). Appeal — Nature of power to issue subpoenas
- Chambre des notaires du Qué. v. R.T.P.C. et al.*, [1983] 1 F.C. 727, (1982), 76 C.P.R. (2d) 211 (T.D.). Motion to quash authorization, certificate and seizure
- Warner Bros. Dist. (Can.) Ltd. v. Director of Investigation and Research et al.* (1983), 71 C.P.R. (2d) 206 (F.C.T.D.). Application for order prohibiting RTPC from proceeding with hearing
- Helix Inv. Ltd. et al. v. Hunter, Director of Investigation and Research*, [1984] 1 F.C. 262, (1983), 73 C.P.R. (2d) 55 (T.D.). Application for order prohibiting continuation of search
- Thomson Newspapers Ltd. et al. v. Hunter, Director of Investigation and Research et al.* (1983), 73 C.P.R. (2d) 67 (F.C.T.D.). Motion for orders prohibiting continuation of search and quashing authorizations — Charter of Rights
- R. v. K.B.M. Electropedic Adjustable Beds* (1983), 50 A.R. 76, 75 C.P.R. (2d) 58 (Q.B.).
- Ziegler et al. v. Hunter, Director of Investigation and Research et al.*, [1984] 1 F.C. 138, (1983), 75 C.P.R. (2d) 222, 39 C.P.C. 203 (T.D.). Application for prohibition or certiorari — Charter of Rights
- Ziegler et al. v. Hunter, Director of Investigation and Research et al.* (1983), 51 N.R. 1, 8 D.L.R. (4th) 648, 81 C.P.R. (2d) 1 (F.C.A.). Appeal — Charter of Rights
- Note: Leave to appeal to Supreme Court of Canada refused, see 55 N.R. 79n.
- Director of Investigation and Research v. R.T.P.C.*, (1985) 4 C.P.R. (3d) 59 (F.C.A.). Application to set aside order of R.T.P.C.

- R. v. Burns Foods Ltd. et al.* (1983), 76 C.P.R. (2d) 223 (Alta. Prov. Ct.). Ruling during preliminary inquiry
- R. v. Burns Foods Ltd. et al.* (1983), 42 A.R. 70, 74 C.P.R. (2d) 60 (Prov. Ct.). Application for order to produce records during a preliminary inquiry
- ACL Canada Inc. v. Hunter et al.* (1983), 79 C.P.R. (2d) 181 (F.C.T.D.). Order adjourning application re validity of search provisions — Charter of Rights
- ACL Canada Inc. v. Hunter et al.* (1984), 79 C.P.R. (2d) 252 (F.C.T.D.). Application for stay of execution of order pending appeal — Charter of Rights
- R. v. R.L. Thorpe Sales Ltd.* (1983), 49 A.R. 354 (C.A.).
- R. v. Brown Shoe Co. of Can.* (1983), 42 O.R. (2d) 674, 150 D.L.R. (3d) 290, 6 C.C.C. (3d) 425 (H.C.J.). Preliminary motion for dismissal of application for written consent of judge to preferring of indictment
- R. v. Brown Shoe Co. of Can.* (1984), 11 C.C.C. (3d) 514 (Ont. H.C.J.).
- R.L. Crain Inc. et al. v. Couture et al.* (1983), 30 Sask. R. 191, 6 D.L.R. (4th) 478, 10 C.C.C. (3d) 119 (Q.B.). Application for relief — Charter of Rights
- Director of Investigation and Research v. Bd. of Comm'rs. of Pub. U. for N.B.* (1983), 52 N.B.R. (2d) 173, 137 A.P.R. 173 (Q.B.). Application for judicial review of decision of Board of Commissioners of Public Utilities — Capacity of Director to participate or intervene before provincial regulatory tribunal
- Director of Investigation and Research v. Bd. of Comm'rs. of Pub. U. for N.B.* (1984), 53 N.B.R. (2d) 343, 8 D.L.R. (4th) 454, 138 A.P.R. 343, 3 C.P.R. (3d) 280 (C.A.). Appeal — Capacity of Director to participate or intervene before provincial regulatory tribunal
- Newfoundland Tel. Co. v. TAS Communications Systems Ltd. et al.* (1983), 47 Nfld. & P.E.I.R. 277, 8 D.L.R. (4th) 617, 1 C.P.R. (3d) 555 (Nfld. C.A.). Appeal from order of Board of Commissioners of Public Utilities — Power of Director of Investigation and Research to intervene before provincial bodies
- Seiko Time Can. Ltd. v. Consumers Distrib. Co.*, [1984] 1 S.C.R. 583, 10 D.L.R. (4th) 161, 1 C.P.R. (3d) 1. Appeal
- City National Leasing Ltd. v. General Motors of Canada Ltd.* (1984), 47 O.R. (2d) 653, 12 D.L.R. (4th) 273, 3 C.P.R. (3d) 262, 45 C.P.C. 174 (H.C.J.). Application to strike out paragraphs of statement of claim — Constitutional validity of recovery of damages provisions of Combines Investigation Act
- R. v. Metropolitan Toronto Pharmacists' Ass'n.*, (1984), 3 C.P.R. (3d) 233 (Ont. H.C.J.).
- Blackwoods Beverages Ltd. et al. v. The Queen* (1984), 30 Man. R. (2d) 249, 15 D.L.R. (4th) 231, [1985] 2 W.W.R. 159, 3 C.P.R. (3d) 336, 47 C.P.C. 294 (C.A.). Appeal
- R. v. Dyck* (1984), Sask. R. 229 (Prov. Ct.).
- R. v. Westfair Foods Ltd.* (1984) 3 C.P.R. (3d) 174 (Man. Prov. Ct.).

APPENDIX VI

Recent Publications of the Bureau of Competition Policy

Misleading Advertising Bulletin (Published quarterly)

How to avoid Misleading Advertising: Guidelines

Annual Report [of the] Director of Investigation and Research, Combines Investigation Act
(for previous fiscal years)

Speeches

Economic Regulation in Transportation and the Growing Need for Change
February 17, 1983 (S-83-1)

Buying Groups and the Combines Investigation Act
June 17, 1983 (S-83-8)

Buying Groups
May 26, 1983 (S-83-11)

Buying Groups — the Effect on our Future
September 13, 1983 (S-83-12)

An address to the International Bar Association on Business Law Conference
October 5, 1983 (S-83-20)

Motor Carrier Collective Ratemaking in Canada
November 2, 1983 (S-83-21)

Buying Groups and Price Discrimination
November 24, 1983 (S-83-22)

Prohibition Orders, Undertakings and Reviewable Matters
April 6, 1984 (S-84-5)

Buying Groups, Associations and the Combines Investigation Act
May 7, 1984 (S-84-14)

Bureau of Competition Policy's View of Certain Procedural Matters
February 3, 1984 (S-84-16)

An Address to the McMaster University MBA Conference
January 13, 1984 (S-84-17)

Buying Groups
May 31, 1984 (S-84-18)

An Address to the Consultative Committee to the Canadian Dairy Commission
May 2, 1984 (S-84-19)

An Address to the Corporate Counsel Section of the Canadian Bar Association
August 28, 1984 (S-84-21)

The Supreme Court of Canada's Decision in Southam
September 26, 1984 (S-84-22)

An Agenda for Telecommunication Policy Change
September 26, 1984 (S-84-25)

An Address to the Canadian Bar Association Panel on Advertising in the Legal Profession
February 26, 1985 (S-85-5)

APPENDIX VII

Administration and Organization of the Bureau of Competition Policy

1. Staff

Lawson A.W. Hunter is the Director of Investigation and Research, and Assistant Deputy Minister, Competition Policy. J. Claude Thivierge is the Deputy Director, Legal, and Mel S. Cappe is the Deputy Director, Economics.

There are five enforcement Branches, each under a Director, as follows:

Resources	M.P. O'Farrell
Services	W.F. Lindsay
Manufacturing	I.R. Nielsen-Jones
Regulated Sector	R. Atkinson
Marketing Practices	K.G. Decker

The Economic Analysis and Policy Evaluation Branch provides comprehensive research support to the Bureau and has the central role in strategic planning and the general development of competition policy. M. Andrieu is the Director, Economic Analysis and Policy Evaluation.

A new functional unit, the Office of Enforcement Operations, was established on April 1, 1983. The Coordinator position is currently vacant.

The Management Services Section provides managerial support in planning, financial, personnel and administrative matters. J.J.D. Read is the Coordinator.

The authorized Bureau strength for 1984-85 was 261 person-years. Of these, 203 are in headquarters. The remaining 58 person-years comprise the field element of the Marketing Practices Branch. Under the direction of six regional managers, 52 investigators and support staff are located in Vancouver, Edmonton, Calgary, Regina, Winnipeg, London, Toronto, Hamilton, Hull, Montréal, Québec City, Dartmouth and St. John's.

The Director of Investigation and Research also received assistance from members of the departmental Legal Branch, who are lawyers from the Department of Justice. The Department of Justice is responsible for prosecutions and other legal proceedings under the Act.

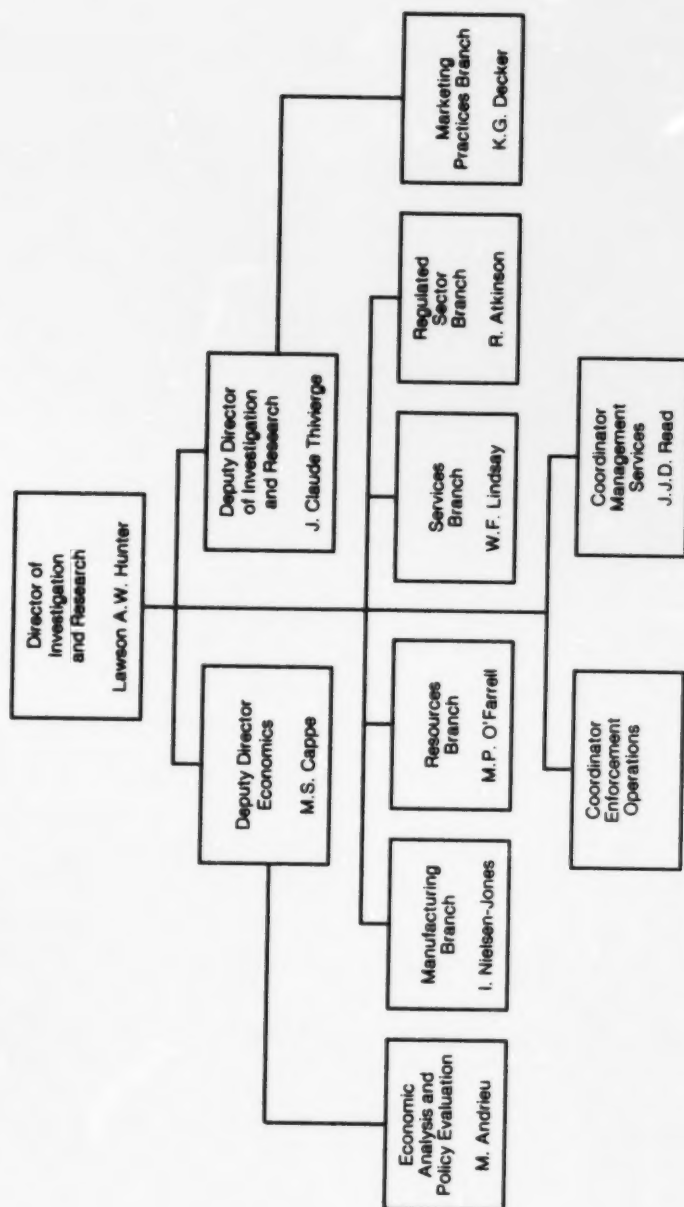
2. Finance

In 1984-85 the operating budget for the administration of the Bureau of Competition Policy was \$15 256 000. Departmental internal reallocation of funds decreased the budget to \$14 691 300 for the year.

The Bureau's major expenditure during the year was \$9 487 311 for staff salaries and benefits, reflecting the fact that the Bureau is highly labour intensive. The Bureau incurred \$1 390 362 in legal fees and disbursements in relation to its activities under the Act.

The Director is also charged with the administrative responsibility for collecting fines imposed by the courts. During 1984-85, a total of 137 fines were collected, with a value of \$2 224 535, which was credited to the government's Consolidated Revenue Fund.

DETAILS OF ORGANIZATION
BUREAU OF COMPETITION POLICY



APPENDIX VIII

Regional and District Offices

Any person wishing to obtain general information on the Act or an opinion under the program of compliance, or wishing to inform the Director of Investigation and Research of any matter that comes within the purview of the Act, can communicate with:

Office of Enforcement Operations
Bureau of Competition Policy
Consumer and Corporate Affairs Canada
50 Victoria Street
Hull, Québec
K1A 0C9
Tel: 994-0798

For any matters pertaining to marketing practices, such persons may also communicate with the regional offices listed below:

1400-800 Burrard Street
VANCOUVER, British Columbia
V6Z 2H8
Tel: 666-5000

2919 - 5th Avenue N.E.
Bag 60, Station "J"
CALGARY, Alberta
T2A 6T8
Tel: 292-5608

260 St. Mary Avenue
Room 201, 2nd Floor
WINNIPEG, Manitoba
R3C 0M6
Tel: 949-5567

Federal Building
451 Talbot Street
3rd Floor,
LONDON, Ontario
N6A 5C9
Tel: 679-4119

50 Victoria Street
HULL, Québec
K1A 0C9
Tel: 997-4282

Guy Favreau Complex
200 Dorchester Blvd. W.
Suite 534, East Tower
MONTRÉAL, Québec
H2Z 1X4
Tel: 283-4571

Oliver Building
10225 - 100th Avenue
1st Floor
EDMONTON, Alberta
T5J 0A1
Tel: 420-2489

4900 Yonge Street
6th Floor
WILLOWDALE, Ontario
M2N 6B8
TEL: 224-4065

10 John Street South
6th Floor
HAMILTON, Ontario
L8N 4A7
Tel: 523-2873

410 Charest Blvd. East
Room 400
QUÉBEC, Québec
G1K 8G3
Tel: 694-3939

Windmill Place
1000 Windmill Road
Suite 1
DARTMOUTH, Nova Scotia
B3M 1L7
Tel: 426-6080

Sir Humphrey Gilbert Building
165 Duckworth Street
5th floor
ST. JOHN'S, Newfoundland
A1C 1G4
Tel: 772-5519

APPENDIX IX

Prohibition Orders

1. Outdoor Advertising — Prohibition Order

ORDER

UPON the Application made this day by the Attorney General of Canada for an Order pursuant to the provisions of sections 30(1) and 31(1) of the Combines Investigation Act, Chapter C-23 of the Revised Statutes of Canada 1970, as amended, and upon having registered convictions this day against Mediacom Inc., Hoal Investments Ltd. and Seaboard Advertising Co. Ltd. for having committed an indictable offence contrary to section 32(1)(c) of the said Combines Investigation Act as set out in the indictment attached hereto and forming part of this Order, and upon being satisfied that Mediacom Industries Inc. - Les Entreprises Mediacom Inc. and Jim Pattison Industries Ltd. are persons within the meaning of section 30(1) of the said Act who should be bound by this Order, and upon hearing what was alleged by counsel for the Attorney General of Canada and reading the Agreed Statement of Fact filed herein, and upon the consent of all Respondents:

1. THIS COURT DOES prohibit, in addition to any other penalty imposed, the continuation or repetition of the said offence by the Respondents.
2. AND THIS COURT does further prohibit the doing of any act or thing by each of the Respondents directed towards the continuation or repetition of the said offence.
3. AND THIS COURT does further specifically prohibit any of the Respondents from doing any act or thing directed toward the continuation or repetition of the said offence, and in particular conspiring, combining, agreeing, or arranging with any other person, who is not a director, officer, agent or employee of the same company to restrict or impede in any manner any competitor or potential competitor from entering into or expanding in a market for the sale of outdoor printed posters, outdoor poster panel space and/or into the market for the printing of outdoor posters.
4. AND THIS COURT DOES further specifically prohibit each Respondent from hereafter:
 - (a) using the terminology "free production" in connection with the sale of outdoor printed posters and outdoor poster panel space to a purchaser or purchasers of such product or the products of any outdoor poster plant operator for whom a Respondent may in future act as an outdoor poster panel space sales representative;
 - (b) selling outdoor printed posters and outdoor poster panel space in any integrated fashion other than as separate products, separately priced and purchaseable separately, except that the Respondent may offer a reasonable rebate, calculated on the basis of average printing costs, which permits the advertiser a reasonable opportunity to obtain poster printing services elsewhere and the ability to purchase poster panel space separately;
 - (c) offering outdoor printed posters and outdoor poster panel space at unreasonably low prices for the purpose of eliminating a competitor from the market.
5. AND THIS COURT DOES further specifically direct that each Respondent shall forthwith terminate all agreements with any other Respondent that have the intent directly or indirectly of furthering an exclusive right of any Respondent to secure regional or national sales of outdoor poster panel space and be prohibited from entering into such agreements in future.
6. AND THIS COURT DOES further specifically direct that each of the Respondents shall forthwith terminate all existing agreements with any outdoor poster plant operator in Canada appointing the Respondents or any one of them as exclusive sales representative

for regional and national sales of outdoor poster panels; and be prohibited from entering into such agreements with anyone in the future where such agreement would have the effect of preventing, lessening, or limiting competition unduly.

7. AND THIS COURT DOES further specifically direct that the Respondents or any one of them if acting in the future as a national sales representative for other outdoor poster plant operators be prohibited from refusing, directly or indirectly, for reasonable compensation to sell outdoor poster panel space, if available, of any poster plant operator in Canada whose prices, terms and conditions of sale and level of service are acceptable to advertisers, provided the particular outdoor poster panel space and poster panels of the poster plant operator meet industry norms and are not located in the same market area where the Respondent company has its own outdoor poster panel plants available for the time during which any given panel space rental is requested or are not located in the same market area where another company represented by such Respondent has poster panel plants available for the time during which any given panel space rental is requested.
8. THE RESPONDENTS OR ANY ONE OF THEM SHALL be prohibited from refusing to sell to an advertiser or person acting on behalf of an advertiser its outdoor poster panel space, if available, or, if it acts in the future as a national outdoor poster panel space sales representative, the poster panel space of another plant operator, if available, on customary terms and conditions and at prices normally charged therefor to other persons, firms and corporations, taking into account volumes, length of contract and similar matters provided that this prohibition shall not operate to prevent the Respondents from reasonably refusing to sell for reasons related to credit worthiness, advertising codes of ethics, the contents of a proposed display or other like reasons not intended to or having the effect of preventing, lessening or limiting competition.
9. AND THIS COURT DOES specifically direct each of the Respondents to send forthwith a copy of the Combines Investigation Act and of this prohibition order to each of its directors and officers and, its managers engaged in the outdoor poster business and to the Board of Directors of the Outdoor Advertising Association and to all current members thereof, and to provide promptly to the Director of Investigation and Research a list of the names and addresses to which, and the date(s) on which, the same were sent.
10. AND THIS COURT DOES specifically direct each of the Respondents to provide promptly to the Director of Investigation and Research for a period of three years from the date of the Order such information as he may request for the purpose of monitoring compliance with the Order and if the Director is not satisfied with such information, he or any representative(s) authorized by him may enter any premises of the Respondents upon 24 hours notice to examine any book, paper, record or other document or machine readable record which in the opinion of the Director or his authorized representative(s) is relevant to ensure compliance with the Order. Nothing in this paragraph shall be construed so as to limit solicitor-client privilege.
11. AND THIS COURT DOES FURTHER order that each and every paragraph of this Order that applies to any Respondent shall be applicable to any corporate successor of such Respondent.
12. THIS COURT SHALL retain jurisdiction over the parties to this proceedings for the purpose of varying or rescinding any of the provisions of this Order, on the joint application of the said parties.

DATED at TORONTO, this 11th day of February, 1985.

2. Simmons Limited — Prohibition Order

ORDER

UPON the application of the Attorney General of Canada for an order pursuant to the provisions of section 30(1) and 31(1) of the Combines Investigation Act, R.S.C. 1970, C-23, as amended, made at the time of entering a plea of guilty by Simmons Limited - Simmons

Limitée to Counts 1, 5, 7, 9, 12, 19, 20, 22, and 23 of the Information of G. Friesen, Department of Consumer and Corporate Affairs Combines Officer, sworn September 30th, 1983, copies of which Counts of the said Information are appended hereto, the remaining Counts having been withdrawn by counsel for the Attorney General, and Counts 1 and 2 of the further Information of G. Friesen, Department of Consumer and Corporate Affairs Combines Officer sworn November 18, 1983, copies of which Counts are appended hereto (all Counts of both Informations being referred to herein as the "Offences"), and upon hearing what was alleged by counsel for the said Attorney General and for Simmons Limited - Simmons Limitée and upon reading the Statement of Fact filed on behalf of the said Attorney General; and on consent:

1. **THIS COURT DOES** prohibit the continuation or repetition of the Offences by the said Corporation.
2. **THE COURT FURTHER PROHIBITS** the doing of any act or thing by the said Corporation and each and every one of its officers, directors, servants, employees, agents, or any of them, directed towards the continuation or repetition of the said Offences.
3. **AND THIS COURT FURTHER SPECIFICALLY PROHIBITS** the said Corporation and each and every one of its officers, directors, servants, employees, agents, or any of them, from doing any act or thing directed toward:
 - (a) directly or indirectly, by agreement, threat, promise or like means attempting to influence upward, or to discourage the reduction of the price at which any person engaged in business in Canada supplies, or offers to supply, or advertises, within Canada any product manufactured or distributed by the said **SIMMONS LIMITED - SIMMONS LIMITÉE**, and
 - (b) refusing to supply a product manufactured or distributed by the said **SIMMONS LIMITED - SIMMONS LIMITÉE** to any person engaged in business in Canada because of the low pricing policy of that person, and
 - (c) engaging in a practice of discriminating by adopting a volume rebate plan or system of classifying its customers, for pricing purposes, under which equally favourable discounts, rebates, allowances, price concessions or other advantages are not available to every competing customer in respect of purchases of goods of like quantity and quality from **SIMMONS LIMITED - SIMMONS LIMITÉE**, and
 - (d) engaging in a practice of discriminating by granting a discount, rebate, allowance, price concession or other advantage to a purchaser of a product manufactured or distributed by **SIMMONS LIMITED - SIMMONS LIMITÉE** as part of a conditional incentive rebate plan whereby competing purchasers of like quantity and quality receive different rebates.
4. **AND THIS COURT FURTHER SPECIFICALLY PROHIBITS** the said Corporation and each and every one of its officers, directors, servants, employees, agents, or any of them from engaging in the following acts for a period of six (6) months commencing thirty (30) days from the signing of this Order:
 - (a) suggesting a retail or resale price to any of the said Corporation's customers in any manner, shape or form, whether or not it is made clear to the customer that he is under no obligation to accept the suggestion and would in no way suffer in his business relation with **SIMMONS LIMITED - SIMMONS LIMITÉE**, or any other person, should the customer not accept the suggestion, and in addition and without restricting the generality of the foregoing from pre-ticketing goods sold by the said Corporation to any of its customers, and
 - (b) prohibiting or restricting or attempting to prohibit or restrict persons supplied by the said **SIMMONS LIMITED - SIMMONS LIMITÉE** from legitimate advertising of the **SIMMONS** name, **SIMMONS** trade name(s) or trademark(s) in the sale and distribution of any products supplied by the said Corporation.

5. AND THIS COURT DOES FURTHER SPECIFICALLY ORDER that nothing in this Order shall or shall be deemed to limit the exercise by SIMMONS LIMITED - SIMMONS LIMITÉE of any right it may have respecting the use of its name(s), trade name(s) or trademark(s) except to the extent the same may be specifically limited by this Order.
6. AND THIS COURT DOES FURTHER SPECIFICALLY direct that SIMMONS LIMITED - SIMMONS LIMITÉE provide to the Director of Investigation and Research, appointed pursuant to the provisions of the *Combines Investigation Act*, for a period of three (3) years from the date of this Order, and within sixty (60) days of implementation, a detailed description and explanation of each plan implemented by the Corporation whereby a discount, rebate, allowance, price concession or other advantage is granted to a purchaser of product from the Corporation; provided that such reporting requirement shall not extend to any discount, rebate, allowance, price concession or other advantage implemented by the Corporation as a temporary expedient in response to competition in the market in the sale and distribution of any products supplied by the said Corporation.
7. AND THIS COURT DOES FURTHER SPECIFICALLY ORDER that each and every paragraph of this Order shall be applicable to any corporate successor of SIMMONS LIMITED - SIMMONS LIMITÉE.

DATED October 15th, 1984.

APPENDIX X

Checklist of Factors to Consider in Assessing the Competitive Effects of National Trade Measures

The following list integrates the work of the OECD's Restrictive Business Practices and Consumer Policy Committees and represents matters that those Committees have identified as being important in adopting trade policies that will be least inimical to maintaining a viable competitive and consumer sensitive economic environment. The commentary elaborating on each factor is not an OECD commentary but is taken from a paper to be presented by the Director to a conference at Ottawa University on Canada and International Trade: Law, Business and Policy in May 1985.

- (a) *Is the measure in conformity with the country's international obligations and commitments?*

Adherence to the provisions of the GATT and the various accords achieved thereunder is pre-eminent in this respect. However, it might be underscored that most of the trade-restraining instruments of the "New Protectionism" are designed to adhere to the letter but not the spirit of the GATT or to exploit particulars on which the GATT is either vague or silent. Voluntary Export Restraints represent a prominent example of the latter.

- (b) *What is the expected effect of the measure on the domestic price of the goods or services concerned and on the general price level?*

In so far as domestic producers commonly price up to the level of protection against import competition, the answer to this question seems clear. This merely stresses the point that restraints on imports result in a lessening of competition and a transfer of income from consumers and other producers in the economy to producers directly benefitting from protection.

- (c) *What are the expected direct economic gains to the domestic sector, industry or firms in question?*

This factor draws attention to the fact that protection affords domestic producers an opportunity to increase both output and price so as to enhance their surplus or profit.

- (d) *What types of jobs are expected to be affected by the measures? What are the net employment effects of the measure in the short and long term?*

With regard to the first aspect of this two-fold question, it seems likely that low productivity jobs would be most affected since industries in which these kind of jobs predominate commonly exert the most pressure for protection in capital-rich industrialized nations. In the summary review of the empirical analysis of protection, it is noted that the number of jobs saved through protection may be relatively small in the short run. To the extent that the measure stimulates labour saving investment, there may actually be a decline in employment in the long run.

- (e) *What are the expected direct gains to government revenues and/or increased government costs?*

The effect on government revenues is dependent on the nature and significance of the measures adopted, but with measures included under the "New Protectionism" a decline in revenues is to be expected. By contrast, all measures tend to increase government costs as a result either of the administrative burden or because of direct expenditures such as subsidies or export promotion. The net result of protection from this vantage seems to be an increase in the burden placed on the taxpayer.

- (f) *What are the direct costs of the measure to consumers due to the resulting higher prices they must pay for the product in question and the reduction in the level of consumption of the product? Are there specific groups of consumers which are particularly affected by the measure?*

The first part of this consideration, of course, merely draws attention to the direct effects of a measure in reducing consumer surplus. By so doing, it ignores the indirect effects associated with consumer reductions in the purchase of other products as a result of higher prices for protected products; this is significant in that it underscores the transfer of income from other producers as a result of reduced sales. Without exception, the effects on consumers are not neutral and, generally, restrictions on imports tend to be regressive so as to place a relatively greater burden on persons with low incomes. An OECD analysis of the *Costs and Benefits of Protection* provides a general empirical answer to this set of questions.

- (g) *What is the likely impact of the measure on the availability, choice, quality and safety of goods and services?*

The answer to this set of questions naturally depends on a case-by-case examination of the influences generated by the particular trade measure. However, competition is an important instrument for protecting consumers' interests with respect to these qualities. Therefore, the reduction of foreign competition could usually be expected to have negative effects in this regard.

- (h) *What is the likely effect of the measure on the structure of the relevant markets and the competitive process within those markets?*

Obviously to the extent that the measure restrains imports, it also increases domestic producers' market share of the market accounted for by domestic suppliers; this tends to reduce the level of competition. Thus, it gives rise to concern from the competition policy perspective, particularly when the domestic industry is highly concentrated.

- (i) *In the medium and longer term, will the measure, on balance, encourage or permit structural adaptation of domestic industry leading over time to increased productivity and international competitiveness, or will it further weaken and delay pressures for such adaptation? Is the measure of a temporary nature? Is it contingent on or linked to other policy measures designed to bring about the desired structural adjustment?*

As may be inferred, this set of questions is basic in considering the response to pressures for protection from foreign competition. Unfortunately, in the past, the potential for structural adjustment has either been ignored or inadequately scrutinized, the meaning of "temporary" inadequately defined, and measures have been implemented on a piece-meal basis with little or no attention to complementary measures required to ensure effectiveness. From an empirical viewpoint, there is a clear suggestion that protection from foreign competition generally delays structural adaptation.

- (j) *What will be the expected effect on investment by domestic firms in the affected sector, by potential new entrants and by foreign investors?*

This question is also important in considering the efficacy of imposing restraints on foreign competition. However, increased investment is not an indication of increased benefits if it represents merely a response to uncompetitive conditions stemming from the imposition of a trade barrier and does not reflect a comparative advantage. On the contrary, it represents a cost in so far as the resources have been diverted from investment in economic activities where an artificial shelter from foreign competition is not required.

- (k) *What could be the expected economic effects of the measure on other sectors of the economy, in particular, on firms purchasing from, and selling products to, the industry in question?*

The issues raised with regard to purchases have already been partly considered in respect of the effects on consumer response and investment. In addition, the direct effects would be similar to those for consumers. As for the direct effects on firms selling products to the industry in question, these would have to be analyzed on a case-by-case basis in light of domestic availability and foreign substitutes.

- (l) *What are the likely effects of the measure on other countries? How can prejudice to trading partners be minimized?*

In so far as trade measures effectively restrict the access of producers in other countries to markets, it would seem that the effects are invariably negative. Although it is possible to reduce such negative effects by choosing between different alternative measures, this commonly involves a trade-off with the amount of protection afforded to domestic producers. For example, tariffs and subsidies are less restrictive than quotas in that the obstacle they impose can be reduced by resort to more efficient methods of production by foreign producers. Market access, albeit diminished, is likely still obtainable. Quotas, on the other hand, by definition impose a quantitative limit on market access. As the Voluntary Export Restraint on automobiles has amply demonstrated, the only way foreign suppliers are able to minimize the effects of quantitative restrictions is to upgrade the unit value of their exports. Still, that the latter adjustment is a second best solution is evidenced by the consideration that Japanese suppliers, if left unrestrained by their government, would have significantly increased their exports of automobiles to the United States following the lifting of the quantitative restraints on March 31st.

- (m) *How are other governments and foreign firms likely to react to the measure and what would be the expected effect on the economy of such actions? Is the measure a response to unfair practices in other countries?*

Canada, it might be mentioned, appears to have taken advantage of the importance of being unimportant in that it has implemented restrictive measures with the expectation that their impact would be too small to evoke retaliation. This expectation may, in fact, have been realized in the majority of instances. Nevertheless, in most situations it is normally impossible to discern whether purchases from any particular country are suppressed or diverted to suppliers from other nations in reaction to such measures. To the extent that this does happen, producers in other Canadian industries are made to shoulder an additional burden.

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